

THE  
ELECTION OF COUNTY COUNCILS  
UNDER  
THE LOCAL GOVERNMENT ACT. 1888.

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PARKER



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*24 December 1888*

# ELECTION OF COUNTY COUNCILS

UNDER

The Local Government Act, 1888,

WITH ESPECIAL REFERENCE TO THE

FIRST ELECTIONS IN JANUARY, 1889.

BY

FRANK R. PARKER,

SOLICITOR AND PARLIAMENTARY AGENT;

*Author of "The Powers, Duties and Liabilities of an Election Agent and of a Returning Officer at Parliamentary Election in England or Wales;" "An Analytical Index and Digest to the Judicature Acts and Rules," etc.*

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TO

THE RIGHT HONORABLE

SIR JOHN LAMBERT, K.C.B.,

LATE SECRETARY OF THE LOCAL GOVERNMENT BOARD,

IN ACKNOWLEDGMENT OF MANY COURTESIES DURING SEVERAL YEARS OF  
OFFICIAL INTERCOURSE,

I DEDICATE THIS BOOK.

W.D. & H.O. WILKS. 11/29/52

749157



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## PREFACE.

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THIS book is a companion volume to my "Election Agent and Returning Officer." The principle on which it is written is that of dwelling with similar detail on such portions of the law and practice regulating local government elections as differ from those which prevail at parliamentary elections, and of avoiding the repetition of such portions as are similar to the latter, and as are already fully dealt with in the "Election Agent and Returning Officer." Thus the Chapter on the Nomination is elaborated, while that on Corrupt and Illegal Practices is confined to the few provisions that have been enacted with especial reference to municipal elections, and refers the reader to my other book for further information on the subject.

The time afforded to me has been so short that I cannot expect that the present work is by any means perfect, or that many of the opinions I have formed will be accepted unchallenged. The Local Government Act did not receive the Royal Assent until the 13th of August last, and copies were not obtainable from the Queen's printers until the 20th of August last. The system of election dealt with is new and untried; it is a combination of the municipal and parliamentary systems; and though it is practically compressed into little more than three sections of the Act (sections 2, 75,

and 103), the incorporation or application of numerous other allied statutes makes the ground to be covered very extensive. All that I can claim is that no pains or labour have been spared in the time given to me to make the book as perfect and as safe a guide as was possible to me under the circumstances.

The passing of the Local Government Act in the short period of one session was only possible by the unremitting attention of the Minister in charge of the Bill, by the combined aid of an able and zealous permanent staff and of experienced parliamentary draftsmen, and by the general concurrence of both Houses of Parliament. The giving practical effect to this Act of Parliament now passes into other hands, from whom similar zeal, ability, and attention will be expected; and I trust this book may in some degree aid in diminishing difficulties, in avoiding dangers, and in bringing the new County Councils safely into existence.

F. R. P.

12 NEW COURT, CAREY STREET,

*October, 1888.*

## TABLE OF ABBREVIATIONS.



### A.

A. & E. ....	Adolphus & Ellis (Queen's Bench Reports, 1834—41).
App. Cas. ....	The Law Reports, Appeal Cases, 1875—1888.
Arnold.....	Arnold's Law of Municipal Corporations, 3rd Edition, by S. G. Johnson, 1883.

### B.

B.A. ....	The Ballot Act, 1872 (35 & 36 Vict. c. 33).
B. & A. ....	Barnewall & Alderson (Queen's Bench Reports, 1817—22).
B. & Ad. ....	Barnewall & Adolphus (Queen's Bench Reports, 1830—34).
B. & Arn. ....	Barron & Arnold (Election Cases, 1843—6).
B. & Aust. ....	Barron & Austen (Election Cases, 1842).
B. & C. ....	Barnewall & Cresswell (Queen's Bench Reports, 1823—30).
B. & P. ....	Bosanquet & Puller (Common Pleas Reports, 1804—7).
B. & S. ....	Best & Smith (Queen's Bench Reports, 1861—9).
Beav. ....	Beavan (Rolls Court Reports, 1840—57).
Bing. ....	Bingham (Common Pleas Reports, 1822—34).
Black. Comm.....	Blackstone's Commentaries on the Laws of England.
Bracton ....	Bracton de legibus et consuetudinibus Anglice, 1569.
Burr.....	Burrow (King's Bench Reports, 1756—72).

### C.

C. B. ....	Common Bench Reports, or Manning, Grainger and Scott's Reports, 1845—57.
C. B. N. S.....	Common Bench Reports, New Series, 1857—65.
C.E.A.....	The County Electors Act, 1888 (51 Vict. c. 10).
C.I.P.P.A. ....	The Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51).
C. O. R. ....	Crown Office Rules, 1886.
C. P. D. ....	The Law Reports, Common Pleas Division, 1875—88.
C. & R. ....	Cockburn & Rowe (Election Cases, 1833).
Car. & Marsh.....	Carrington & Marshman (Nisi Prius Reports, 1842).
Ch. D. ....	The Law Reports, Chancery Division, 1875—88.
Chit.....	Chitty (Queen's Bench Reports, 1819—20).
Cl. & F. ....	Clark & Finelly (House of Lords Reports, 1831—46).
C. L. R. ....	Common Law Reports, 1855—6.
Co. Litt. ....	Coke's Littleton, 1st Institute.
Colt. ....	Coltman's Registration Cases, 1879—85.

**D.**

- D. & M. .... Davison & Merrivale (Queen's Bench Reports, 1843—4).  
 D. L. .... Dowling & Lowndes (Queen's Bench Reports, 1844—8).  
 Dowl. .... Dowling (Practice Reports, King's Bench, 1830—41).  
 D. & R. .... Dowling & Ryland (Queen's Bench Reports, 1822—8).

**E.**

- E. & B. .... Ellis & Blackburn (Queen's Bench Reports, 1851—8).  
 E. & E. .... Ellis & Ellis (Queen's Bench Reports, 1858—61).  
 East ..... East (King's Bench Reports, 1801—14).  
 Election Agent ..... Parker's Election Agent and Returning Officer, 1885.  
 Ency. Britt..... Encyclopædia Britannica, 9th Edition, 1875.  
 Esp. .... Espinasse (Nisi Prius Reports, 1793—1807).  
 Ex. D. .... The Law Reports, Exchequer Division, 1875—80.

**F.**

- F. & F. .... Falconer & Fitzherbert (Election Cases, 1835—8).  
 Fox ..... Fox (Registration Cases, 1886—7).

**G.**

- G. & D. .... Gale & Davison (Queen's Bench Reports, 1841—3).

**H.**

- H. & C. .... Hurlstone & Coltman (Exchequer Reports, 1862—5).  
 H. L. Cas. .... Clark's House of Lords Cases, 1847—66.  
 H. & N. .... Hurlstone & Norman (Exchequer Reports, 1856—61).  
 Heyw. Co. .... Heywood on County Elections, 2nd edition, 1812.  
 H. & P. .... Hopwood & Philbrick (Registration Cases, 1863—7).  
 Hop. & C. .... Hopwood & Coltman (Registration Cases, 1868—78).

**J.**

- J. P. .... Justice of the Peace.  
 Jur. .... Jurist (Reports, 1837—54).  
 Jur. N. S. .... Jurist, New Series (Reports, 1855—66).

**K.**

- K. & G. .... Keene & Grant (Registration Cases, 1854—5).  
 K. & O. .... Knapp & Ombler (Election Cases, 1834—5).

**L.**

- L.G.A. .... The Local Government Act, 1888 (51 & 52 Vict. c. 41).  
 L. J. C. P. .... Law Journal Reports, Common Pleas, 1823—84.  
 L. J. M. C. .... Law Journal Reports, Magistrates Cases, 1823.  
 L. J. Q. B. .... Law Journal Reports, Queen's Bench, 1823—84.  
 L. M. & P. .... Lowndes, Maxwell & Pollock (Practice Cases, 1850—51).

L. R. C. P. ....	Law Reports, Common Pleas, 1865—75.
L. R. Eq. ....	Law Reports, Equity, 1865—75.
L. R. Ex. ....	Law Reports, Exchequer, 1865—75.
L. R. H. L. ....	Law Reports, House of Lords, 1866—75.
L. R. Ir. ....	Irish Law Reports.
L. R. Q. B. ....	Law Reports, Queen's Bench, 1865—75.
L. T. ....	Law Times Reports, New Series, 1859—88.
L. T. N. ....	Law Times Newspaper.
Ld. Keny. ....	Lord Kenyon (King's Bench Reports, 1819—25).
Lud. ....	Luders (Election Cases, 1784—7).
Lutw. ....	Lutwyche (Registration Cases, 1843—53).

# **M.**

Mack. & L. ....	Mackenzie & Lushington's Registration Manual, 1888.
Maxwell ....	Maxwell on the Interpretation of Statutes, 1875.
M. C. A. ....	The Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50).
M. E. C. I. P. A. ....	The Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70).
M. & G. ....	Manning & Grainger (Common Pleas Reports, 1840—4).
M. G. & S. ....	Manning, Grainger & Scott (Common Pleas Reports, 1845—7).
Moore ....	Moore (Privy Council Appeals, 1836—62).
M. & P. ....	Moore & Payne (Common Pleas Reports, 1827—31).
M. & R. ....	Moody & Robinson (Nisi Prius Reports, 1830—44).
M. & S. ....	Maule & Selwyn (Queen's Bench Reports, 1813—17).
M. & W. ....	Meeson & Welsby (Exchequer Reports, 1836—47).

# **N.**

N. & M. ....	Neville & Manning (Queen's Bench Reports, 1832—6).
N. & P. ....	Neville & Perry (Queen's Bench Reports, 1836—38).

# **O.**

O'M. & H. ....	O'Malley & Hardcastle (Reports of Election Petitions, 1869—86).
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# **P.**

P. & D. ....	Perry & Davison (Queen's Bench Reports, 1838—41).
P. & K. ....	Perry & Knapp (Election Cases, 1833).
P. R. & D. ....	Power, Rodwell & Dew (Election Cases, 1847—56).
Print. Min. ....	Minutes of Evidence taken on the trial of Election Petitions, and printed by order of the House of Commons.

# **Q.**

Q. B. ....	Queen's Bench Reports, 1841—52.
Q. B. D. ....	The Law Reports, Queen's Bench Division, 1875—88.

**R.**

Rawlinson .....	Rawlinson's Municipal Corporations, 8th edition, 1884.
Roe .....	Roe on Elections, 2nd edition, 1818.
Rog. ....	Rogers on Elections, 14th edition, 1885.
Rules, 1883. ....	General Rules under the M.C.A., 1883.

**S.**

S. C. ....	Same Case.
Salk. ....	Salkeld (King's Bench Reports, 1695—1704).
Scott. ....	Scott (Common Pleas Reports, 1834—40).
Scott N. S. ....	Scott, New Series (Common Pleas Reports, 1856—65).
Stra. ....	Strange (Queen's Bench Reports, 1716—47).

**T.**

T. L. R. ....	Times Law Reports, 1884—8.
T. R. ....	Term Reports (King's Bench, 1785—1800).

**W.**

W. Bl. ....	William Blackstone (Queen's Bench Reports, 1746—79).
W. & D. ....	Wolferstan & Dew (Election Cases, 1857—8).
W. N. ....	Weekly Notes, 1866—88.
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# T A B L E

## OF

### UNAPPLIED SECTIONS OF THE MUNICIPAL CORPORATIONS ACT, 1882.

The following table, formed by the Author in the course of his studies, of sections of the Municipal Corporations Act, 1882, which are either not applied to the Local Government Act, 1888, or are expressly excluded therefrom, may be of use to the professional reader.

Section of M.C.A.	Part of M.C.A.	By what section excluded or not applied.
M.C.A. ss. 1-7.....	Part I.....	L.G.A. s. 75, par. 1.
" s. 15, sub. 5 .....	" II.....	" " sub. 16 <i>b</i> .
" s. 16 .....	" .....	" " "
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" s. 25 .....	" .....	" " sub. 16 <i>b</i> .
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" s. 30 .....	" .....	L.G.A. s. 75, sub. 16 <i>b</i> .
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" ss. 105-123.....	Part V. ....	" s. 75, par. 1.
" ss. 125-132.....	" .....	" " "
" ss. 133-218.....	Parts VI., VII., VIII, IX. X., XI. ....	" " "
" ss. 228, 229, 251, 257...	Part XIII. ....	" " sub. 16 <i>b</i> .
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## CHAPTER I.

CHAP. I.

### THE COUNTY COUNCIL.

<i>Establishment of county council</i> . . . . . 1 <i>Constitution, incorporation and style</i> . . . . . "		<i>Area of county council</i> . . . . . 2 <i>Provisional order as to boroughs and urban sanitary districts in the same area</i> . . . . . 3
<i>Administrative counties being parts of entire counties</i> . . . . . "		<i>Alteration of boundaries, union of counties, etc., by Local Government Board</i> . . . . . "
<i>Liberties and franchises</i> . . . . . 2		
<i>Boundary of county for first election</i> . . . . . "		

A COUNCIL shall be established in every administrative county as defined by the L.G.A., and be entrusted with the management of the administrative and financial business of that county (L.G.A. s. 1). The expression "administrative county" means the area for which a county council is elected in pursuance of the L.G.A., but does not (except where expressly mentioned) include a county borough (*ib.* s. 100). Each of the boroughs named in sch. III. is an administrative county of itself, and is in the Act referred to as a "county borough" (*ib.* s. 31).

Establishment  
of county  
council.

The county council shall consist of the chairman, aldermen, and councillors (L.G.A. s. 1); it shall be a body corporate by the name of the county council with the addition of the name of the administrative county, and shall have perpetual succession and a common seal (*ib.* s. 79, sub. 1).

Constitution,  
incorporation,  
and style.

The ridings of Yorkshire, the divisions of Lincolnshire, the eastern and western divisions of Sussex, the eastern and western divisions of Suffolk, the Isle of Ely and the residue of the county of Cambridge, the soke of

Administra-  
tive counties  
being parts of  
entire coun-  
ties.

CHAP. I. Peterborough, and the residue of the county of Northampton, are separate administrative counties (L.G.A. s. 46, sub. 1). The wapentake of the ainsty of York, except so much as is included in the borough of York, forms part of the west riding of the county of York (*ib.* s. 50, sub. 1, *d*).

Liberties and franchises.

Every liberty and franchise of a county, wholly or partly exempt from contribution to the county rate, forms part of the county of which it forms part for the purposes of parliamentary elections (L.G.A. s. 48, sub. 1). The Cinque Ports and two ancient towns and their members form part of the county in which they are respectively situate (*ib.* sub. 4). The Scilly Islands do not form part of the county of Cornwall, but the Local Government Board may by provisional order apply the L.G.A. thereto (*ib.* s. 49).

Boundary of county for first election.

The first council elected for any administrative county shall, subject as hereinafter mentioned, be elected for the county at large as bounded at the passing of the L.G.A. for the purpose of the election of members to serve in parliament for the county: Provided always, that—

(*a.*) This enactment shall not apply to the boundary between two administrative counties which are portions of one entire county, and in case of those administrative counties, the boundary between the portions, as existing for the purposes of county rate, shall, subject to any change made by or in pursuance of the L.G.A., be the boundary of the administrative county for which the council is elected; and,

(*b.*) Where any urban sanitary district is situate partly within and partly without the boundary of such county, the district shall be deemed to be within that county which contains the largest portion of the population of the district, according to the census of 1881 (L.G.A. s. 50, sub. 1).

Area of county council.

The county council shall have, for the purposes of the L.G.A., authority throughout the administrative county

for which it is elected, and the administrative county as bounded for the purpose of the election shall, subject to alterations made in manner hereinafter mentioned, be for all the purposes of the L.G.A. the county of such county council (L.G.A. s. 50, sub. 2). If any difference arises as to the county which contains the largest portion of the population of any such district, such difference shall be referred to the Local Government Board, whose decision shall be final (*ib.* sub. 3).

This section applies to an administrative county within the meaning of the L.G.A., save that it shall not apply to the administrative county of London, nor to any county borough, and any place which, though forming part of any such borough for the purposes of parliamentary elections, is not within the municipal boundary of such borough, shall form part of the county in which such place is situate (*ib.* sub. 4).

The Local Government Board shall make provisional orders for dealing with every case where the council of a borough is not the urban sanitary authority for the whole of the area of such borough, and the area of the borough is either co-extensive with, or is wholly or partly comprised in, any urban sanitary district, and such order shall determine whether the area of the borough or of the sanitary district, or an area comprising both the borough and the urban sanitary district, or a portion of such united area, shall, whether with or without any adjoining area, be the area of the county district for the purposes of the L.G.A., so, however, that in either case the order shall provide for the council of the borough becoming the district council, and the order may for that purpose alter the boundaries of the borough, and may, if need be, alter the boundaries of the county; and if the population exceeds fifty thousand, the order may constitute the borough into a county borough, and make such provision as may be necessary for carrying the L.G.A. into effect as respects such county borough; and the provisions of the L.G.A. respecting county boroughs shall, subject to the provisions of the order, apply (L.G.A. s. 52, sub. 1).

Provisional orders as to boroughs and urban sanitary districts in same area.

## CHAP. I.

Where certain members of the sanitary authority for any such urban sanitary district are appointed by a university or any colleges therein, the order may provide for the appointment by such university or colleges of members on the district council (L.G.A. s. 52, sub. 2).

A provisional order under this section shall not be of any effect until it is confirmed by parliament (*ib.* sub. 3).

Alteration of  
boundaries,  
union of  
counties, etc.,  
by Local  
Government  
Board.

The Local Government Board may before the appointed day (as to what is the appointed day see s. 109), and afterwards on the representation of any county council or town council, and after the 1st of November, 1889, without any such representation, make an order, after holding a local inquiry :—(*a*) altering the boundary of any county or borough, or (*b*) uniting a county borough with a county, or (*c*) uniting any counties or boroughs, or dividing any county, or (*d*) constituting any borough having a population of not less than fifty thousand into a county borough, or (*e*) altering any area of local government partly situate in a county or borough (L.G.A. s. 54, subs. 1, 2, 5). But such order shall have no effect until confirmed by parliament (*ib.* sub. 3), and where such order unites two county boroughs, it may make them one borough and one county (*ib.* s. 55, sub. 1), and may make provision for regulating the division of the combined borough into wards, the number of councillors to be elected for each ward, the first election of the council of the combined borough, and all other incidental matters (*ib.* sub. 2).

In every alteration of boundaries, care shall be taken that, so far as practicable, the boundaries of an area of local government shall not intersect the boundaries of any other area of local government (L.G.A. s. 60).

## CHAPTER II.

## CHAP. II.

## ELECTORAL DIVISIONS OF THE COUNTY.

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AN electoral division is a division of an administrative county for the purpose of the election of county councillors. (L.G.A. s. 2, sub. 2, *e* ; s. 1). One county councillor only shall be elected for each electoral division (*ib.* sub. 2, *e*), and any borough returning one councillor only shall be an electoral division (*ib.* sub. 3, *b*).

In the case of a borough returning one county councillor only, the boundaries of the electoral division are the boundaries of the borough (see L.G.A. s. 2, sub. 3, *b*).

In the case of a borough returning more than one county councillor, the boundaries of the electoral divisions are determined by the town council of the borough (L.G.A. s. 2, sub. 3, *c*).

In the rest of the county, the boundaries of the electoral divisions are determined by the quarter sessions for the county (*ib.*).

In the constitution of electoral divisions of a county, whether for the first election or for subsequent elections, the following directions shall be observed :—

- (1.) The divisions shall be arranged with a view to the population of each division being, so nearly as conveniently may be, equal, regard being had to a proper representation both of the rural and of the urban population, and to the distribution and pursuits of such population, and to area,

CHAP. II.  

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and to the last published census for the time being, and to evidence of any considerable change of population since such census ;

- (2.) Electoral divisions shall, so far as may be reasonably practicable, be framed so that every division shall be a county district or ward, or a combination of county districts or wards, or be comprised in one county district or ward ; but where an electoral division is a portion of a county district or ward, and such portion has not a defined area for which a separate list or part of a list of voters is made under the Acts relating to the registration of electors, such portion shall, until a new register of electors is made, continue to be part of the district or ward of which it has been treated as being part in the then current register of electors ;
- (3.) Whenever under the provisions of this section a county district is divided into two or more portions, every such portion shall, as far as possible, consist of an entire parish or of a combination of entire parishes ;
- (4.) In determining the electoral divisions for the first election, the foregoing provisions shall apply as if, where a rural sanitary district is situate in more than one county, each portion of the district which is situate in the same county were a county district, and any such portion may be combined with a county district, or portion of a county district, although not adjoining ;
- (5.) The electoral divisions for the first election shall be fixed on or before the 8th of November, 1888 (L.G.A. s. 51).

The term "ward" is not defined in the L.G.A., but apparently means a ward formed for the election of the members of an urban sanitary authority. It will be observed that the electoral divisions are to be so formed as not to overlap a sanitary district, except in so far as may be necessary to equalise the population of each electoral



division, and to the proper representation of the rural and urban population. Every portion of a divided county district (*i.e.* an urban or rural sanitary district) must also consist of one or several entire parishes. And where a parish is situate partly within and partly without any borough, urban sanitary district or other area, each part is to be considered a separate parish (L.G.A. s. 100). In some counties there are boroughs which, although they have not sufficient population to enable them to return a councillor, yet form parts of county districts, to which separate representatives might properly be assigned. In any such case it is competent for the court of quarter sessions to form the county district into an electoral division (see the circular of the Local Government Board, dated 17th August, 1888).

With reference to the constitution of electoral divisions, the Local Government Board, in their above-mentioned circular, after pointing out that any place which, though forming part of a county borough for the purpose of the election of members of parliament, is not within the municipal boundary of the borough, will, for the purpose of constituting electoral divisions, form part of the county in which the place is situate, observe:—

“It will be seen that the area for which a county council is to be elected, and in which, therefore, electoral divisions must be formed by the court of quarter sessions, will not necessarily be the same as the area hitherto subject to the jurisdiction of the court. For, as already stated” (see *ante*, p. 2), “an urban sanitary district situate partly within and partly without the county is to be deemed to be within that county which contains the largest portion of its population, and the part of any district thus brought into the administrative county must, in constituting electoral divisions, be dealt with by the court of quarter sessions of that county only, unless it forms part of a borough which will return one or more councillors, in which case the electoral divisions will have to be determined by the town council, and not by quarter sessions. Moreover, for all purposes of the Act, every liberty and franchise of a county, wholly or

partly exempt from contribution to the county rate, is, subject to certain exemptions which are not material for the present purpose, made part of the county in which it is included for parliamentary elections. The Cinque Ports, and two ancient towns, and their members, are also, for all the purposes of the county council, and of the powers and duties of quarter sessions under the Act, to form part of the county in which they are respectively situate" (see *ante*, p. 2). "In all these cases it will devolve upon the court of quarter sessions of the county to deal with the areas in question in forming electoral divisions, except in so far as the area may be included in a county borough, or in any borough which will return one or more councillors.

"The courts of quarter sessions for the counties of Middlesex, Surrey, and Kent respectively, will form the electoral divisions in so much of those counties as is situate outside the Metropolis, and is not comprised in a county borough, or in any borough returning one or more councillors.

"The ridings of Yorkshire, the divisions of Lincolnshire, the eastern and western divisions of Sussex, under the County of Sussex Act, 1865, the eastern and western divisions of Suffolk, the liberty of the Isle of Ely, and the rest of the county of Cambridge, the soke of Peterborough, and the rest of the county of Northampton, constitute separate administrative counties for the purposes of the Act" (see *ante*, p. 1), "and it will devolve on the courts of quarter sessions having jurisdiction in these areas to form electoral divisions in so much of them respectively as is not included in any borough with sufficient population to return one or more councillors.

"The Scilly Isles are not to be included in any electoral division of the county of Cornwall" (see *ante*, p. 2).

"It is obvious, that in fixing the electoral divisions in accordance with the directions contained in the Act, regard must be had to the areas for which separate lists or parts of lists of voters have been made, so that the electoral divisions may be formed in such a way that there will be no difficulty in ascertaining who are the



electors entitled to vote in each division. The Board are desirous of drawing special attention to this point. They are empowered by the Act, in the case of the first election, to authorise an electoral division to return two or more members in any case where the difficulties arising out of the registers of voters and the population of any area appear to render it necessary, and they may also authorise portions of two or more county districts or wards for which a separate register can be made, to be united for the purpose of an electoral division. The Board think, however, that these powers should only be resorted to in very exceptional cases."

The Local Government Board may before the appointed day (as to what is that day see s. 109), and afterwards on the representation of any county council or town council, and after the 1st of November, 1889, without any such representation, make an order, after holding a local inquiry, altering the boundary of any electoral division of a county or the number of electoral divisions in a county (L.G.A. s. 54, subs. 1, 2, 5). Alteration of boundaries.

Where the Local Government Board make an order uniting two county boroughs (as to which see *ante*, p. 4), they may therein make provision for regulating the division of the combined borough into wards (L.G.A. s. 55, sub. 2).

The Local Government Board in the case of the first election may authorise an electoral division to return two or more members, in any case where the difficulties arising out of the registers of voters and the population of any area appear to render it necessary, and may also authorise portions of two or more county districts, or wards for which a separate register can be made, to be united for the purpose of an electoral division (L.G.A. s. 108, sub. 2). They may also, if satisfied that an election cannot properly be held by reason of the electoral divisions not having been duly made, cause such steps to be taken as they consider necessary for constituting such electoral divisions and making up the registers of electors (*ib.* sub. 4). Powers of Local Government Board at first election.

## THE ELECTORS.

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<i>Blind persons</i> . . . .	"	<i>and polling agents</i> . . . .	"
		<i>Making up the register</i> . . . .	"

THE M.C.A. and M.E.C.I.P.A. are applied to local government elections by L.G.A. s. 75.

Who are electors.

The persons entitled to vote at the election of a county councillor shall be in a borough the burgesses enrolled in pursuance of the M.C.A. and the Acts amending the same, and elsewhere the persons registered as the county electors under the County Electors Act, 1888 (L.G.A. s. 2, sub. 4).

A person shall not be deemed a burgess unless he is enrolled as a burgess (M.C.A. s. 9, sub. 1), and every person enrolled in the burgess roll shall be deemed to be enrolled as a burgess (*ib.* s. 45, sub. 8). A person shall not be deemed a county elector unless he is registered as a county elector (*ib.* s. 9, sub. 1; L.G.A. s. 75), and every person registered in the register of county electors shall be deemed to be registered as a county elector (M.C.A. s. 45, sub. 8; L.G.A. s. 75).

Title to vote.

At an election of a county councillor, a person shall be entitled to demand and receive a voting paper, and to vote, if he is enrolled in the burgess roll or registered in the register of county electors and not otherwise (M.C.A. s. 51, sub. 1; L.G.A. s. 75). The mere fact of

the entry of a person's name is conclusive as to his right to vote, unless he be prohibited by law from voting (M.C.A. s. 51, sub. 3). It is thus necessary to consider what are the prohibitions against this *primâ facie* right of voting, but at the same time it may be remarked that it is not for the returning officer or his presiding officers to look behind the burgess roll or register of county electors, or to refuse to allow any person to vote whose name appears thereon.

Women are entitled to be registered and to vote (M.C.A. s. 63; C.E.A. s. 2, sub. 2); but this only removes the disqualification by reason of sex, and leaves untouched the disqualification by reason of status (*R. v. Harrald*, L. R. 7 Q. B. 362). By marriage a woman's status is merged in that of her husband, and therefore a married woman is not entitled to be registered or to vote, unless her marriage has been dissolved by the decree of a competent court (*ib.*). And it would seem also, that a woman unmarried when placed on the register, but married at the time of the election, is also disqualified from voting (*ib.* 363, 364). The Married Women's Property Act, 1882, leaves untouched the status of a married woman (*ib.* 363).

An alien (M.C.A. s. 9, sub. 3, *a*; C.E.A. s. 2), an infant (M.C.A. s. 9, sub. 2, *a*; C.E.A. s. 2), an idiot, a lunatic, unless during a lucid interval, and a childish and imbecile person, cannot vote (see Election Agent, pp. 260, 261). But if the name of any such person appears on the burgess roll or register of county electors, he is entitled to demand and to receive a voting paper notwithstanding his legal incapacity, and his vote must be left to be struck off on a scrutiny, or other legal proceeding. A deaf and dumb person who can by signs make himself understood can vote (*ib.* 260); and a blind person gives his vote through the presiding officer (B.A. r. 26).

A person convicted on indictment, or reported guilty by an election court, of any corrupt practice at a parliamentary election is incapable, during seven years from conviction, of being registered as an elector or voting at

CHAP. III. — a local government election (C.I.P.P.A. s. 6, sub. 3 ; ss. 4, 64) ; so also if he be convicted or reported guilty by an election court of any corrupt practice at a municipal election (M.E.C.I.P.A. s. 2, sub. 2 ; s. 3, sub. 1) ; or at a local government election (*ib.* ; L.G.A. ss. 2, 75) ; or at any of the following elections, viz. : member of a local board, member of improvement commissioners, poor law guardian, member of school board (M.E.C.I.P.A. s. 36). A person convicted of any corrupt practice at a school board election is similarly incapable for six years after such election (33 & 34 Vict. c. 75, s. 91) ; but this provision is perhaps superseded by M.E.C.I.P.A. s. 36, just quoted.

Persons guilty  
of illegal  
practices.

A person convicted of an illegal practice at a parliamentary election is incapable, during five years from the date of his conviction, of being registered as an elector, or voting at any local government election held for or within the county or borough in which the illegal practice was committed (C.I.P.P.A. ss. 10, 64) ; so also if he be convicted of an illegal practice at a municipal election, or at an election for a member of a local board, or improvement commissioners, poor law guardian, or member of school board (M.E.C.I.P.A. ss. 7, 36, 34) ; or at a local government election (*ib.* ; L.G.A. ss. 2, 75).

Treason and  
felony.

A person convicted of treason or felony, for which he is sentenced to death or penal servitude, or any term of imprisonment with hard labour exceeding twelve months, is incapable of exercising any municipal franchise until he has suffered the punishment to which he has been sentenced, or such other punishment as by competent authority may be substituted for the same, or shall receive a free pardon (33 & 34 Vict. c. 23, s. 2 ; and see further hereon Election Agent, p. 59). This statute is not directly incorporated into the L.G.A. (see L.G.A. s. 75), but as the county council are to be elected in like manner as a town council (*ib.* s. 2, sub. 1), it is indirectly applied to local government elections.

Constables.

Borough constables, except special constables, are, while such, and for six months after they have ceased to be constables, incapable of voting at the election of any person to any municipal office in the borough (19 & 20

Vict. c. 69, s. 9). This statute is also not directly applied to the L.G.A., but seems to be indirectly applied to local government elections, as mentioned *supra*. The incapacity of county constables to vote was formerly limited to parliamentary elections (2 & 3 Vict. c. 93, s. 9), and is now removed (50 Vict. sess. 2, c. 9, s. 1), and as such constables can vote at municipal elections, they can also vote at local government elections.

A returning officer at a local government election, if entitled to vote, is not deprived of his right to vote by the fact that he is returning officer (see M.C.A. s. 58, sub. 5). He is also entitled, in case of equality of votes, to a casting vote, as mentioned *post*, p. 148.

A person employed for payment by a candidate at a local government election as clerk, messenger, or polling agent, cannot vote (M.E.C.I.P.A. s. 13, sub. 3). This prohibition does not extend to the person appointed to attend the proceedings before the returning officer (see *post*, pp. 49, 101); and the agents employed at the counting of the votes (see *post*, p. 52); and in respect to the election expenses and return (see *post*, pp. 51, 161, 163), are employed after the voting is over.

The clerk of the peace shall make up the county register, and division registers of the county electors for the purposes of the first election of county councillors, and shall deliver the same to the returning officer (L.G.A. s. 103, sub. 4).

Returning  
officers.

Candidate's  
clerks, messen-  
gers and  
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Making up  
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## CHAPTER IV.

THE COUNTY COUNCILLOR AND HIS  
ELECTION STAFF.

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## I. THE OFFICE OF COUNTY COUNCILLOR.

THE M.C.A. is applied to the L.G.A. by ss. 2, 75 ; the M.E.C.I.P.A. by L.G.A. s. 75.

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 Term of office. The county councillors shall be elected for a term of three years, and shall then retire together, and their places shall be filled by a new election (L.G.A. s. 2, sub. 2, *d.*). The first county councillors shall not enter on their ordinary duties, or become the county council, until the first day of April next after their election, or such other day as on the application of the provisional council the Local Government Board may appoint (L.G.A. s. 105, sub. 1), and shall retire from office on the ordinary day of election in the third calendar year after the passing of the L.G.A. (*ib.* s. 104, subs. 1, 4), *i.e.* on the 1st of November, 1891. The exact time when they retire is the first moment of the ordinary day of election, *i.e.* one moment after midnight of the previous day; and they cannot act, or vote, or take part in any meeting held on the ordinary day of their election. They do not, as does the chairman, continue in office until their successors have accepted office (*cf.* M.C.A. s. 15, sub. 3, and s. 56, subs. 3, 4).

Number. The number of county councillors, and their apportionment between each of the boroughs which have sufficient population to return one councillor and the rest of the county, shall be such as the Local Government Board may determine (L.G.A. s. 2, sub. 3, *a.*), and as they have determined by the orders issued by them on the 17th of August, 1888.

The Local Government Board may, before the appointed day (as to what is that day see s. 109), and afterwards on the representation of the council of any county or borough, and after the 1st of November, 1889, without any such representation, make an order, after holding a local inquiry, altering the number of county councillors; and if they make such an order they may by such order divide or alter any electoral division (L.G.A. s. 54, subs. 1, 2, 5). And when they make an order uniting two county boroughs, they may, by such order, regulate the number of councillors to be elected for each ward (*ib.* s. 55, subs. 1, 2).



## II. THE QUALIFICATION OF A COUNTY COUNCILLOR.

THE consideration of who is qualified to be a county councillor is far more complicated than in any other similar election. In a parliamentary election, the question is confined to a consideration of certain specified disqualifications; in a municipal election, the subject mainly consists of a consideration of who is qualified to be a burgess; in a county councillor's election, in addition to the consideration of who is entitled to be a burgess or county elector, there are also to be considered the ten pounds occupation qualification added by the C.E.A. and the qualifications of the peer and parliamentary voter added by the L.G.A.

A person is eligible as a county councillor who, although not qualified in manner provided by the M.C.A. as applied by the L.G.A., is :—

Complexity of the subject.

Different kinds of qualification.

- (a.) A peer owning property in the county (see *post*, p. 18).
- (b.) A person registered as a parliamentary voter in respect of the ownership of property of whatsoever tenure situate in the county (see *post*, p. 19).

And a person is also eligible as a county elector who is :—

- (c.) A person qualified in manner provided by the M.C.A. as applied by the L.G.A. (see *post*, p. 22).

A person possessing any one of these qualifications is eligible for any electoral division of the county. Although a county elector can only vote in the particular electoral division in which he is registered or enrolled, there are no words limiting his qualification for election to that electoral division; and just as the eligibility of a town councillor is not confined to the particular ward of the borough in which he is enrolled as a burgess or has his qualifying property, but extends to any ward in that borough, so also the eligibility of a county councillor is not confined to the electoral division of the county in

CHAP. IV. — which he is registered as a county elector or has his qualifying property, but extends to any electoral division of that county.

The subject of a county councillor's qualification divides itself into three considerations: (1) who are qualified; (2) who are expressly disqualified; (3) who are exempt from serving, and therefore from election, as county councillors. Of these in their order, and first as to those who are qualified.

#### *A.—Peers.*

A peer owning property in the county is eligible for election as a county councillor (L.G.A. s. 2, sub. 2, *b*), but the Act does not specify what persons it comprehends in the word peer.

Who is a  
peer.

In its historical sense the word "peerage" takes in all members or possible members of the House of Lords, and no other persons; but in the modern sense of the word it is clear that there may be peers who are not lords of parliament, as well as lords of parliament who are not peers (Ency. Britt., tit. "Peerage"). Thus, on the one hand, spiritual lords, though lords of parliament, are not peers; and on the other hand, a life peer (other than the lords of appeal in ordinary hereinafter mentioned), though the holder of a peerage, is not a lord of parliament (*ib.*). In its legal sense, the word "peerage" appears to mean the hereditary temporal peerage only, and to require that the holder of a peerage should be a lord of parliament *in esse* or *in posse* (*ib.*). Peers of Scotland and Ireland who are not representative peers, and who do not hold peerages of England, of Great Britain, or of the United Kingdom, are peers, for they are members of the House of Lords *in posse*; but Irish peers sitting in the House of Commons lose their privilege of peerage so long as they are members of that body (*ib.*). A lord of appeal in ordinary is a lord of parliament, and ranks as a baron during life; but as his title is not hereditary, he is not, it would seem, a peer (*ib.*; 39 & 40 Vict. c. 59, s. 6; 50 & 51 Vict. c. 70, s. 2). The judges, though summoned to the House of Lords,

are not peers ; they have no seat or vote, and are not members of the House (Ency. Britt., tit. "Peerage"). And the children of peers, though called by a title of peerage, are legally commoners (*ib.*). CHAP. IV.

It would therefore seem that an Irish peer being a member of the House of Commons ; a lord of appeal in ordinary ; the son of a peer ; a life peer ; and a judge, are not peers within the above enactment. What peers are ineligible.

With regard to the property in the county which a peer must own to be eligible as a county councillor, the expression "property" includes all property, real and personal, and all estates, interests, easements, and rights, whether equitable or legal, in, to, and out of property, real and personal, including things in action, and registers, books, and documents (L.G.A. s. 100). No definition could be wider, and it is difficult to see what limitation will be placed on the word "property" used in connection with the qualification of a peer. The qualifying property must be the subject of ownership, but the statute does not require that the property should be in possession, and therefore property in reversion, or on lease or loan to another person, will, it is presumed, satisfy the section. Movable personal property, and therefore goods, chattels, or cattle, are sufficient ; but as they must be "in the county," it is probable that they must remain there during the whole period that the peer holds office as alderman or councillor. The framers of this enactment, which was first introduced into the Bill in committee in the House of Lords, probably intended that the qualifying property should consist of landed estates, or pecuniary investments, or of some other substantial possession in the county ; but it also seems probable that they overlooked the definition of "property" already in the Bill, and the extensive effect thus given to their enactment. Property qualification of a peer.

### B.—Parliamentary Ownership Voters.

A person who is registered as a parliamentary voter in respect of the ownership of property of whatsoever tenure situate in the county, is eligible as a county coun- Requisites of the qualification.

CHAP. IV. cillor (L.G.A. s. 2, sub. 2, *b*). This qualification, it will be observed, requires that the person should be :—

1. A registered voter,
2. In respect of ownership,
3. Of property the subject of tenure,
4. Situate in the county.

1. Registration as voter. 1. The person must be a registered voter, but the section does not require that he should be entitled to be so registered. If then he is in fact registered, that is sufficient, and his title to be so registered cannot be inquired into. He must be registered at the time he seeks election, and probably must remain so registered while he holds office as county councillor.

2. Ownership of property. 2. He must be registered in respect of the *ownership* of property, and therefore a person who is registered in respect of the *occupation* of property is not qualified for election as a county councillor. The division of the register in which his name appears, determines whether he is registered as an ownership or as an occupation voter (see *infra*).

3. Tenure of the property. 3. The property must be the subject of tenure, and therefore a parliamentary voter whose qualifying property is not such, cannot be elected a county councillor under this qualification.

Now there are two classes of persons entitled as parliamentary voters in counties, viz., ownership voters, and occupation voters, and each of these classes are entered in separate lists and form separate parts of the register of voters (48 Vict. c. 15, s. 2, sub. 2 ; and sch. II. form I. part I. par. 2, *a*). The first list, that of ownership voters, which alone comprises the persons entitled to be elected county councillors under this qualification, consists of persons who are entitled to :—

- (1.) A freehold estate of inheritance of the annual value of 40s. (8 Hen. VI. c. 7).
- (2.) An estate for life or lives of freehold tenure of the annual value of 40s., provided such persons actually occupy, *or* were entitled to such estate on 7th June, 1832, *or* have since then acquired such estate by marriage, marriage settlement,

devise, or promotion to a benefice or office (2 Will. IV. c. 45, s. 18).

- (3.) An estate for life or lives of freehold, copyhold, or customary tenure of the annual value of £5 (2 Will. IV. c. 45, s. 18 ; 30 & 31 Vict. c. 102, s. 5).
- (4.) As lessee, sub-lessee, or assignee, to, and, if as sub-lessee or assignee, in actual occupation of, lands or tenements, either :—
  - (a.) For the whole unexpired residue of a term, originally created for not less than sixty years, of £5 clear annual value (30 & 31 Vict. c. 102, s. 5) ; or
  - (b.) For the whole unexpired residue of a term, originally created for not less than twenty years, of £50 clear annual value (2 Will. IV. c. 45, s. 20).

The last class of these voters, viz., persons entitled as lessee, etc., appear to be qualified as county councillors, seeing that they are “registered in respect of the ownership of property situate in the county,” although the property in respect of which they are so registered is not properly described as “of tenure.” Tenure includes every holding of inheritance, but an estate for years is not a holding of inheritance but a chattel, and is merely a contract for the possession of lands or tenements for some determinate period (2 Black. Comm. 140). There is no tenure between lessor and lessee ; the latter can claim nothing but the fruits of the land (Bracton, lib. ii. c. 9, f. 27), and is possessed not of the land, but of the term of years (2 Black. Comm. 144). But the word tenure is applied in the Registration Acts to leasehold as well as to freehold estates (48 Vict. c. 15, sch. II. form I. part I. par. 2, a), and the intention doubtless was to qualify this last class as well as the three other classes above mentioned.

4. The property must be “situate in the county.” 4. Situation of County here means “administrative county,” *i.e.* the area for which the county council is elected (L.G.A. s. 100), and further means that particular administrative county in which the county councillor seeks election. <sup>the property.</sup>

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*C.—Persons qualified under M.C.A.*STATUTORY  
ENACTMENT.  

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We now come to the consideration of what persons are qualified in manner provided by the M.C.A. as applied by the L.G.A., and this is to be ascertained by reading M.C.A. s. 11, "with such modifications as are necessary to make it applicable" to county councillors (L.G.A. s. 75). The above section (M.C.A. s. 11), so modified, reads as follows :—

1. The county councillors shall be fit persons elected by the county electors (M.C.A. s. 11, sub. 1) ; that is, in a borough, by the burgesses enrolled in pursuance of the M.C.A., and elsewhere, by the persons registered as county electors under the C.E.A. (L.G.A. s. 2, sub. 4 ; and see *ante*, p. 10).

2. A person shall not be qualified to be elected or to be a county councillor, unless he :—

(a.) Is registered and entitled to be registered as a county elector ; or

(b.) Being entitled to be so registered in all respects except that of residence, is resident beyond seven miles but within fifteen miles of the county, and is entered in the separate non-resident list directed (by C.E.A. s. 12 ; L.G.A. s. 75, sub. 12 ; and s. 76, sub. 6) to be made ; and

(c.) In either of those cases, is seized or possessed of real or personal property, or both, to the value or amount, in the case of a county having four or more electoral divisions, of one thousand pounds, and in the case of any other county, of five hundred pounds, or is rated to the poor rate in the county, in the case of a county having four or more electoral divisions, on the annual value of thirty pounds, and in the case of any other county, of fifteen pounds.

3. Provided that every person shall be qualified to be elected and to be a county councillor, who is, at the time of election, qualified to elect to the office of county councillor ; which last-mentioned qualification for being



elected shall be alternative for, and shall not repeal or take away, any other qualification.

4. But if a person qualified under the last foregoing proviso ceases for six months to reside in the county, he shall cease to be qualified under that proviso, and his office shall become vacant, unless he was at the time of his election, and continues to be, qualified in some other manner (M.C.A. s. 11).

Upon this section the first points to be observed are : (1) that the county councillors must be fit persons (see *post*, p. 24) ; (2) that mere registration as a county elector, though a sufficient title to *vote* (M.C.A. s. 51, sub. 1), is not alone a sufficient title for election, inasmuch as a person elected under this section must not only be registered, but must be "entitled to be registered" as a county elector (see *Middleton v. Simpson*, 5 C. P. D. 183 ; *R. v. Dixon*, 15 Q. B. 33) ; (3) that all persons resident within, or within seven miles of, the county, and registered and entitled to be registered as county electors, are eligible to the office of county councillor without any property or rating qualification, and that this is the simplest qualification in the M.C.A., and is that under which town councillors are most usually elected ; and (4) that all persons resident beyond seven but within fifteen miles of the county, and entered on the non-resident list, are also eligible, but must possess the property or rating qualification mentioned in M.C.A. s. 11, sub. 2, c, and lose this qualification as soon as they cease to be so resident. It is further to be observed that the words "qualified to elect" refer only to the qualifications in M.C.A. s. 9, and that a person who is entitled "to demand and receive a voting paper and to vote," simply because he is enrolled in the burgess roll, or registered in the register of county electors (see M.C.A. s. 51, sub. 1), is not thereby "qualified to elect" if he is not qualified under M.C.A. s. 11, inasmuch as s. 51 only carries out the provisions as to qualification of a person in his capacity of voter, and has no reference to the qualifications of a councillor (*Flintham v. Roxburgh*, 17 Q. B. D. 44).

- CHAP. IV. A fit person is one legally competent to perform the duties of the office to which he seeks election. Thus an habitual drunkard is unfit (*R. v. Taylor*, 3 Salk. 231); and an idiot, a lunatic (unless elected during a lucid interval), and a deaf and dumb person would doubtless be held unfit (see Election Agent, pp. 46, 47). But a blind person is not unfit (*ib.*), though he is exempt from election (see *post*, p. 47).
- Drunkards, idiots, and deaf, dumb, and blind persons.
- Infants. A county councillor must be of full age (see *post*, p. 27), and therefore an infant is not a fit person.
- Returning officers. A returning officer cannot return himself, and is therefore ineligible, and not a fit person (*R. v. Owens*, 2 E. & E. 86; *R. v. White*, L. R. 2 Q. B. 557; and see *R. v. Blizard*, *ib.* 55).
- Clergy. If the sheriff desires to be a candidate at the first election, he must apply to the county quarter sessions to appoint another person to be returning officer (L.G.A. s. 103, sub. 2; and see further hereon, *post*, p. 55).
- Municipal officers. Clerks in holy orders and other ministers of religion are qualified (L.G.A. s. 2, sub. 2, *a*), but must possess the qualification under M.C.A. s. 11, as applied by L.G.A., as to which see *ante*, p. 22.
- Women. The recorder (M.C.A. s. 163, sub. 6); the town clerk (*ib.* s. 17, sub. 1); the borough treasurer (*ib.* s. 18, sub. 1); the elective auditors (*ib.* s. 25, sub. 2); and the revising assessors of a municipal borough (*ib.* s. 29, sub. 2); the clerk to borough justices (*ib.* s. 159, sub. 2); and the borough coroner (*ib.* s. 171, sub. 1), are disqualified from being members of the town council of their municipal borough; but there seems to be nothing to disqualify any of them for election as county councillors.
- It is said that women are disqualified from election as town councillors (see per Mathew, J., in *Flintham v. Roxburgh*, 17 Q. B. D., at p. 47); and that "no one can doubt that if an elector would nominate and vote only for a woman as mayor or burgess in parliament, his vote would be thrown away" (*Gosling v. Veley*, 7 Q. B. 439), and if so, women are ineligible as county councillors. It is true that these were both *obiter dicta*, and that the



dictum in the last quoted case probably referred rather to woman's ineligibility to parliament (which is clear) than to a town council, and was before the earliest Act (32 & 33 Vict. c. 55, s. 9) in which the municipal franchise was given to women. But it is difficult to refute the argument that the express grant of the right to vote given by M.C.A. s. 63 is equivalent to a legislative declaration that a woman's rights are so limited, and do not extend to render her eligible for election (Arnold, p. vii., and see Rawlinson, 154 n. (b)). On the other hand, an instance is given in Grant on Corporations, p. 6, of a corporation consisting of women as well as men who possessed certain municipal powers; and women have been constantly elected, without challenge, as members of the school boards under the Education Acts, where the word "member," equally with the word "person" in the M.C.A., imports the masculine gender, and is therefore to be taken to include females unless the contrary is expressly provided (13 & 14 Vict. c. 21, s. 4). In the Education Acts there is, however, no provision corresponding to M.C.A. s. 63, on which the main argument of woman's ineligibility as a town councillor is founded.

According to the present decisions, a county alderman is not ineligible as a county councillor, but vacates his office of county alderman immediately on his accepting his new office of county councillor (*R. v. Mayor, etc., of Bangor*, 18 Q. B. D. 349). But this decision has been questioned in the House of Lords, and the point cannot be considered as settled (*Pritchard v. Mayor, etc., of Bangor*, 13 App. Cas. 241). County  
aldermen.

We now come to the consideration of what persons are "entitled to be registered" as county electors, which again divides itself into the consideration of two questions: viz. (1) who are entitled to be enrolled as burgesses; and (2) who are entitled to be registered as county electors.

A person shall not be entitled to be enrolled as a burgess unless he is qualified as follows:— BURGESS  
QUALIFICA-  
TION.

(a.) Is of full age; and

(b.) Is on the 15th of July in any year, and has been

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- during the whole of the then last preceding twelve months, in occupation, joint or several, of any house, warehouse, counting-house, shop, or other building (in this Act referred to as "the qualifying property") in the borough ; and
- (c.) Has during the whole of those twelve months resided in the borough, or within seven miles thereof ; and
  - (d.) Has been rated in respect of the qualifying property to all poor rates made during those twelve months for the parish wherein the property is situate ; and
  - (e.) Has on or before the 20th of the same July paid all such rates, including borough rates (if any), as have become payable by him in respect of the qualifying property up to the then last preceding 5th of January.

Every person so qualified shall be entitled to be enrolled as a burgess, unless he :—

- (a.) Is an alien ; or
- (b.) Has within the twelve months aforesaid received union or parochial relief or other alms ; or
- (c.) Is disentitled under any Act of Parliament (M.C.A. s. 9, subs. 2, 3).

A person shall not be entitled to be registered as a county elector unless he is qualified as follows :—

- (a.) Is of full age ; and
- (b.) Is on the 15th of July in any year, and has been during the whole of the then last preceding twelve months, in occupation, joint or several, of any house, warehouse, counting-house, shop, or other building (in this Act referred to as "the qualifying property") in any part of the county outside the limits of a borough ; and
- (c.) Has during the whole of those twelve months resided in any part of the county outside the limits of a borough, or within seven miles thereof ; and
- (d.) Has been rated in respect of the qualifying property to all poor rates made during those

twelve months for the parish wherein the property is situate ; and

- (e.) Has on or before the 20th of the same July paid all such rates, including county rates (if any), as have become payable by him in respect of the qualifying property up to the then last preceding 5th of January.

Every person so qualified shall be entitled to be registered as a county elector in the parish in which the qualifying property is situate, unless he :—

- (a.) Is an alien ; or  
(b.) Has within the twelve months aforesaid received union or parochial relief or other alms ; or  
(c.) Is disentitled under any Act of Parliament (C.E.A. s. 2, subs. 1, 2).

Every person enrolled in the burgess roll (or registered in the list of county electors) shall be deemed to be enrolled as a burgess (or registered as a county elector), and every person not enrolled in the burgess roll (or not registered in the register of county electors) shall be deemed to be not enrolled as a burgess (or not registered as a county elector) (M.C.A. s. 45, sub. 8 ; L.G.A. s. 75).

The elements of the above two qualifications do not materially differ, and may conveniently be considered together.

The first essential is that a burgess or county elector shall be of full age. Full age is completed at the first moment of the day preceding the twenty-first anniversary of a person's birth, for the law does not notice a fraction of a day, and a person is thus of full age though he may not have lived twenty-one years by nearly forty-eight hours (1 Salk. 44 ; 2 *ib.* 625 ; *acc.* 1 Black. Comm. 464). Thus, a person born at any hour on the 17th of July, 1867, attained his majority immediately after midnight on the night of the 15th of July, 1888), (the first moment of the morning of the 16th of July, 1888). It is not necessary that the elector should have been of full age during the whole of the prescribed period of occupation and residence ; it is sufficient if he attains his full age on the 15th of July in the year in which he is to be registered

CHAP. IV. (Powell v. Bradley, 18 C. B. N. S. 65). But it is not sufficient if he attains full age after that date, though before the election (*Hargreaves v. Hopper*, 1 C. P. D. 195).

Occupation.

The next requirement is that the burgess or county elector shall have been in occupation of his qualifying property for the period above mentioned. Occupation is the actual user by a person lawfully entitled to exclusive possession, for the purposes of a dwelling-house or of his trade, business, or profession. Occupation by an agent or servant is sufficient (*Nunn v. Denton*, 7 M. & G. 66). It is also sufficient if the owner or tenant keeps the house, etc., ready for habitation whenever he pleases to go to it, and although he does not in fact reside in it one day in the year (*R. v. St. Pancras*, 2 Q. B. D. 588); or if he use the house partly for warehousing goods, and partly for a sale room (*Daniel v. Coulsting*, 7 M. & G. 122). It is not necessary in order to make a man an occupier that he should actually sleep or take his meals in a house, or that his family should actually dwell in the house; it is sufficient if he hold the whole, and by himself or his family occupy a part (*R. v. Ditchet*, 9 B. & C. 185; and see *R. v. St. Nicholas, Rochester*, 5 B. & Ad. 219). A warehouse is occupied if the owner or tenant keep goods therein (*Daniel v. Coulsting*, 7 M. & G. 122); a counting-house, if he use it by himself or his clerks during business hours (*Downing v. Luckett*, 5 C. B. 40; *Piercy v. Maclean*, L. R. 5 C. P. 252).

A compulsory occupation in performance of a person's contract of service, as distinguished from a person's occupation as a reward therefor, is not sufficient to qualify for registration (*McClean v. Prichard*, 20 Q. B. D. 285). A person is not entitled to be enrolled a citizen of Oxford, or a burgess of Cambridge, by reason of his occupation of any rooms, chambers, or premises in any college or hall of either of those universities (M.C.A. s. 257, sub. 3).

Successive.

Where a person succeeds to qualifying property by descent, marriage, marriage settlement, devise, or promotion to a benefice or office, the occupancy of the property by a predecessor in title is equivalent to the occupancy of the successor, and the successor is not

required to prove his own occupancy before the succession (M.C.A. s. 33, sub. 1). And the qualifying property need not be throughout the twelve months the same property, or in the same parish (*ib.* sub. 2). CHAP. IV.  
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The qualifying property must be a house, warehouse, counting-house, shop, or other building. A stone and brick built building, with tiled roof, the lower story used as a cowhouse and stable, the upper story as a bedroom, accessible only by a staircase from the stable, is properly described as a house (*Nunn v. Denton*, 1 Lutw. 178; 7 M. & G. 66). A house may be occupied otherwise than by dwelling in it, and therefore a building occupied partly as a warehouse and sale-room, and partly as workshops, is a "house" (*Daniel v. Coulsting*, 1 Lutw. 230; 7 M. & G. 122). One of several rooms in a house, all occupied as counting-houses, the house having a wooden gate and door at the outer entrance, shut at night but open all day, and none of the occupiers having separate keys, is a "counting-house" (*Downing v. Luckett*, 2 Lutw. 33; 5 C. B. 40); and so also is a solicitor's office (*re Creek*, 3 B. & S. 459). A house is still a house although part be let to a lodger, provided the portion so let is not structurally severed from the residue, or provided with a separate entrance, with exclusive dominion over that entrance (*R. v. Mayor of Eye, Neobard's Case*, 9 A. & E. 670, and see *Evans' Case, ib.* 679). House, ware-  
house, count-  
ing-house, etc.

The terms house, warehouse, etc., include any part of any house, where that part is separately occupied for the purposes of any trade, business, or profession; and any such part may, for the purpose of describing the qualification, be described as office, chambers, studio, or by any like term applicable to the case (M.C.A. s. 31, *a*). Where an occupier is entitled to the sole and exclusive use of any part of a house, that part shall not be deemed to be occupied otherwise than separately by reason only that the occupier is entitled to the joint use of some other part (*ib.* s. 31, *b*). Thus, each room in a cotton factory, four stories in height, and which was let off to different persons for cotton spinning, each exclusively occupying and having the key of the door of one room, Part of house.



## CHAP. IV.

in which room each had his own spinning machine, all of which machines were worked by one steam engine and main gearing provided by the landlord, has been held to be a building entitling the occupier to be registered (*Wright v. Town Clerk of Stockport*, 5 M. & G. 33, and see *Greenway v. Batchelor*, 12 Q. B. D. 381). But apart from the above section, part of a house is not a house in point of law unless there is an actual structural severance of the part from the rest of the building (*Cook v. Humber*, 11 C. B. N. S. 33; *Henrette v. Booth*, 15 C. B. N. S. 500).

“Other building.”

Everything that can be called a building is not a building within the meaning of the M.C.A. and C.E.A. The building must be in some degree adapted both to be used by man, either for residence or for the industry to which the statute relates, and also to have the degree of durability which is included in the idea of a building (*Powell v. Boraston*, 18 C. B. N. S. 180); it must have permanence and utility, and must contribute to the beneficial occupation of the land, and thus increase the real annual value of the land (*Morish v. Harris*, L. R. 1 C. P. 162).

The following have been held to be buildings:—a brick or stone built cowhouse or stable with a tiled roof and a door with lock and key (*Whitmore v. Town Clerk of Wenlock*, 1 Lutw. 10; 5 M. & G. 9); a wooden shed let into the ground, the roof formed of tarpauling, used for placing in it barrows, shovels, etc. (*Watson v. Cotton*, 2 Lutw. 53; 5 C. B. 51; but see *Powell v. Boraston*, 18 C. B. N. S. 181); a similar structure with a thatched roof, used for storing potatoes (*Powell v. Farmer*, 18 C. B. N. S. 169); a stone building, with four walls, a roof and a door, used for storing manure (*Morish v. Harris*, L. R. 1 C. P. 155); a similar building, with three sides, but open in front, used for milking cows and keeping a pig (*Gilham v. Harris*, *ib.* 158); a similar building useful as affording shade and shelter to cattle (*Berry v. Harris*, *ib.* 159); a lime-kiln (*Lyme Regis*, B. & Aust. 486).

The question of whether an erection is a building is one for the revising barrister, and unless he gives a

description inconsistent with its being such, the court will not interfere (*Watson v. Cotton*, 5 C. B. 51; *Morish v. Harris*, L. R. 1 C. P. 162; and see *Ward v. Overseers of Willesden*, 1 Lutw. 314; 2 C. B. 15).

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The qualification continues although the house has been pulled down and is being rebuilt (*New Windsor*, K. & O. 153); or has been burnt down (*Lyme, Cozen's Case*, B. & Aust. 463); but not if the occupation is not resumed (*Lyme, Hicks' Case*, B. & Aust. 460).

The right qualification must be entered; if an elector occupying a "house" is described as occupying a "counting-house," his name must be expunged from the register (*R. v. Mayor of Chipping Wycombe*, 44 L. J. Q. B. 82).

A man is not disqualified from being registered or voting as a burgess in respect of the occupation of any house, by reason only that during a part of the qualifying period, not exceeding four months in the whole, he has, by letting or otherwise, permitted such house to be occupied as a furnished dwelling-house by some other person, and during such occupation by another person has not resided in or within seven miles of the borough (48 Vict. c. 9, s. 2). The preamble recites that it is desirable to apply the above provision to voters at municipal elections, and as a woman is such a voter (M.C.A. s. 63), it is presumed that the above provision applies to a woman, though it speaks only of "a man." And as it is an Act amending the M.C.A., it is applied to local government elections (L.G.A. s. 75).

Letting furnished house.

The next essential is that the burgess or county elector shall have resided in the borough or in any part of the county outside the limits of a borough, or within seven miles thereof, for the requisite twelve months.

Residence.

Residence denotes the place where a person eats, drinks, and sleeps, or where his family, or his servants, eat, drink, and sleep (*R. v. North Curry*, 4 B. & C. 959; *R. v. Hammond*, 17 Q. B. 781; *Allan v. Greensill* 4 M. G. & S. 100). The question of whether there has been such a degree of inhabitance as to be, in substance and in common sense, a residence is a question of fact in each case



CHAP. IV. (R. v. *Mayor of Exeter, Westcombe's Case*, L. R. 4 Q. B. 110, and cf. *Dipstale's Case*, *ib.* 114).

In order to constitute residence, a person must possess at least a sleeping apartment, but an uninterrupted abiding at such dwelling is not requisite. Absence, no matter how long, if there be the liberty of returning at any time, and no abandonment of the intention to return whenever it may suit the person's pleasure or convenience so to do, will not prevent a constructive legal residence (*Powell v. Guest*, 18 C. B. N. S. 80; *Bond v. Overseers of St. George, Hanover Square*, L. R. 6 C. P. 314; and see *R. v. Sargent*, 5 T. R. 468; *R. v. Duke of Richmond*, 6 T. R. 560; *R. v. Mitchell*, 10 East, 517).

But the residence must be real, substantial, and *bonâ fide*, and not colourable (*Whithorn v. Thomas*, 1 Lutw. 125; 7 M. & G. 1). And although there need not be an uninterrupted abiding in one place during the whole twelve months, yet there must be the power of returning at any time; and if a person by his own act, or by force of law, is debarred from returning whenever it suits his pleasure or convenience so to do, he cannot be said to have even a constructive residence. Thus, a person serving under articles to a solicitor in London cannot be said to reside in his father's house in Exeter, although the latter keeps a bedroom in his house for his son's exclusive benefit; for, being bound by his articles, he has neither the liberty nor the intention to return to the room whenever he likes (*Ford v. Drew*, 5 C. P. D. 59); and so, also, a person who has contracted to give his personal services daily at such a distance from the qualifying property as practically to prevent his returning thereto without a breach of the contract during the term of the service, cannot be said to reside there (*Beal v. The Town Clerk of Exeter*, 20 Q. B. D. 300).

A clergyman who has exchanged duties and residence with another for two months, and has thus given up the liberty of returning to his own house during that period, has not resided there during such two months (*Ford v. Pye*, L. R. 9 C. P. 269; and see *Durant v. Carter*, *ib.* 261). An officer in the army is subject to the Queen's will and

pleasure, and is not *sui juris*, or at liberty to proceed at his own pleasure to the house he occupies during his leave of absence, and therefore does not reside there (*Ford v. Hart*, L. R. 9 C. P. 273; *acc. Spittall v. Brook*, 18 Q. B. D. 426; and compare *R. v. Michell*, 10 East, 511). A person imprisoned more than seven miles from the borough or county is not, during the time he is in prison, *sui juris*, or at liberty to return to his house, and therefore does not reside there during that term (*Powell v. Guest*, 18 C. B. N. S. 72). A student occupying rooms in a college at a university, under regulations which prohibit his residing in or visiting his rooms during vacation without the express permission of the college authorities, cannot be said to reside in such rooms (*Tanner v. Carter*, 16 Q. B. D. 231).

The seven miles are to be measured in a straight line on a horizontal plane, and may be determined by the ordnance survey map (M.C.A. s. 231).

The next essential is that the burgess or county elector shall have been rated in respect of the qualifying property to all poor rates made during the twelve months for the parish wherein the property is situate (M.C.A. s. 9, sub. 2, *d*). Rating.

The occupier of every rateable hereditament is to be entered in the rate book, whether the rate is collected from the owner or the occupier, and such occupier is deemed to be duly rated, and any occupier whose name has been omitted, is, notwithstanding such omission, and that no claim to be rated has been made by him, entitled to every qualification and franchise depending upon rating, in the same manner as if his name had not been so omitted (32 & 33 Vict. c. 41, s. 19). This provision is of general application, and is not confined to cases where an agreement has been made under s. 3 of 32 & 33 Vict. c. 41, or where an order has been made under s. 4 of the same Act (41 & 42 Vict. c. 26, s. 14).

If an occupier of any qualifying property claims to be rated to the poor rate in respect thereof, and pays or tenders to the overseers the full amount of the poor rate last made in respect of the property, the overseers shall Claim by occupier to be rated.

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put his name in the rate book in respect of that rate (M.C.A. s. 32, sub. 1). If they fail to do so, he shall nevertheless, for the purposes of the M.C.A., be deemed to be rated to that rate (*ib.* sub. 2).

As to what constitutes occupation as a tenant, and not as a servant, so as to entitle the occupier to have his name entered in the rate book, see *Smith v. Overseers of Seghill*, L. R. 10 Q. B. 422, and cases there cited.

Rating of  
predecessor.

When a person succeeds to qualifying property by descent, marriage, etc., the rating of the predecessor is equivalent to the rating of the successor, and need not be proved (M.C.A. s. 33, sub. 1).

Poor rate,  
when made.

A poor rate is not made until it is both signed by the overseers and allowed by the justices (*Jones v. Bubb*, L. R. 4 C. P. 468). It is deemed to be made on the day on which it is allowed by the justices, and if the justices sever in their allowance, then on the day of the last allowance (32 & 33 Vict. c. 41, s. 17).

Payment of  
poor rate.

The fifth and last essential is that the burgess or county elector shall have, on or before the 20th of July, paid all rates as have become payable by him in respect of the qualifying property up to the then last preceding 5th of January (see *ante*, p. 26).

By deduction  
from rent, etc.

Every payment of a rate by the occupier, notwithstanding the amount thereof may be deducted from his rent, and every payment of a rate by the owner, whether he is himself rated instead of the occupier, or has agreed with the occupier or with the overseers to pay such rate, and notwithstanding any allowance or deduction which the overseers are empowered to make from the rate, shall be deemed a payment of the full rate by the occupier for the purpose of any qualification or franchise which, as regards rating, depends upon the payment of the poor rate (32 & 33 Vict. c. 41, s. 7).

By instal-  
ments.

The payment of an instalment of a rate payable by instalments shall, as respects any qualification or franchise depending upon the payment of the poor rate, be deemed a payment of such rate in respect of the period to which the instalment applies (32 & 33 Vict. c. 41,

s. 15); and so also as regards the borough rate (M.C.A. s. 33, sub. 3), and county rates (*ib.*; C.E.A. s. 2, sub. 2). CHAP. IV.

When by way of commission, or abatement, or deduction under 32 & 33 Vict. c. 41, an allowance or deduction shall actually be made, the same shall, for the purpose of every qualification or franchise depending upon rating, or upon payment of rates, be deemed to have been duly made in pursuance of every or any agreement, order, notice, or proceeding necessary for the validity thereof under that Act, and to be an allowance or deduction which the overseers are empowered to make; and no qualification or franchise depending upon rating or upon payment of rates shall be defeated by reason of such allowance or deduction not having been made in pursuance of an agreement in writing, order in writing, or notice in writing, or by reason of the want or insufficiency of any agreement, order, notice, or proceeding necessary for the validity thereof under that Act, or by reason of any informality or defect in the making thereof (42 & 43 Vict. c. 10, s. 2). Allowances and deductions.

Payment of the entire rate by one or more of parties jointly rated is a payment by each of them; and a payment made on behalf of the ratepayer, if made by a person whom he has procured to do so by giving him value for it, as payment by his landlord in consideration of higher rent (*Wright v. Town Clerk of Stockport*, 1 Lutw. 32; 5 M. & G. 33; *Moger v. Escott*, L. R. 7 C. P. 158), or in part remuneration for the ratepayer's services, is a good payment (*Hughes v. Overseers of Chatham*, 5 M. & G. 54; 1 Lutw. 51). But excusal from payment on the ground of poverty is not equivalent to payment for the purposes of the qualification (*Abel v. Lee*, L. R. 6 C. P. 365); and a purely voluntary payment by third parties (*e.g.* by political persons for political purposes) does not entitle the persons whose rates are thus paid to be registered (*R. v. Mayor of Bridgnorth*, 10 A. & E. 66). Payment by third parties.

A poor rate becomes due as soon as it has been published in the manner required by law (17 Geo. II. c. 3, s. 1; 1 Vict. c. 45, s. 2). A demand upon the ratepayer is not necessary to render the amount due. When payable.

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But a poor rate does not become payable unless it is valid on the face of it (*Fox v. Davies*, 6 C. B. 11 ; 2 Lutw. 97 ; *R. v. Dyott*, L. R. 9 Q. B. 47). Thus, if the rate be not signed by two justices, it is not valid on its face, and does not therefore become payable at any time (*Fox v. Davies*, 6 C. B. 11 ; 2 Lutw. 97). And if there is anything left undone which the law requires to be done to create the liability to pay—thus, if an incoming tenant has not been called upon to pay a rate not paid by the outgoing tenant—that rate is not one which has become payable (*Flatcher v. Boodle*, 18 C. B. N. S. 152). A rate which does not by its heading, or by something in the body of the rate, show by what authority and for what purposes it is made, is void (*R. v. Eastern Counties Railway Co.*, 5 E. & B. 974). Non-payment of an illegal rate does not disentitle a person to be registered as a burgess or county elector (*R. v. Mayor of New Windsor* 7 Q. B. 908) ; but the non-payment of a rate valid on its face will so disentitle (*Baker v. Locke*, 11 L. T. 567).

The non-payment of a rate made under a local Act does not disqualify, although the town council have power to enforce it as a borough rate (*R. v. Mayor, etc., of Lichfield*, 2 Q. B. 693).

## Aliens.

If all the above essentials are fulfilled, the burgess or county elector is qualified, unless he (*inter alia*) is an alien. An alien is a person born out of the dominions of the Crown of England ; out of the allegiance of the King (1 Black. Comm. 366). An alien to whom a certificate of naturalization has been granted by a Secretary of State is entitled to all political and other rights, powers, and privileges, and is subject to all obligations to which a natural-born British subject is entitled or subject (33 & 34 Vict. c. 14, s. 7 ; and see further as to aliens, Election Agent, 47, 250).

## Parochial relief.

And the burgess or county elector must not, within the twelve months, have received union or parochial relief, or other alms (M.C.A. s. 9, sub. 3, *b*).

A payment made by poor law guardians to a pauper by way of relief, not of wages, and measured by the wants of the applicant, and not by the quantity of the



work done by him, is "parochial relief or other alms" (*Margarill v. Overseers of Whitehaven*, 16 Q. B. D. 242). A payment made out of the parish funds to or on account of those whom a person is by law bound to support, viz., his wife, his children under sixteen years old (4 & 5 Will. IV. c. 76, s. 56), the legitimate or illegitimate children of his wife born prior to his marriage with her until such children attain sixteen or their mother dies (*ib.* s. 57), is relief given to such person. The mother of an illegitimate child is, while unmarried or a widow, bound to maintain such child until the child attains sixteen, and therefore relief given to such child is relief given to her (*ib.* s. 71). But a person is not bound to support his parents, except on an order of justices, and so relief given to his parent does not disqualify the burgess or county elector (*R. v. Ireland*, L. R. 3 Q. B. 130; *Trotter v. Trevor*, 32 L. J. C. P. 59).

The excusal from payment of poor rate on the ground of poverty, is not "parochial relief" within the above statute (*Mashiter v. Dunn*, 6 C. B. 30); nor vaccination, nor the surgical or medical assistance incident to vaccination performed or rendered by a public vaccinator (30 & 31 Vict. c. 84, s. 26); nor the remission of school fees on account of the poverty of the parent (33 & 34 Vict. c. 75, s. 17); nor the payment by the guardians of the school fees of any child whose parent, though not a pauper, is unable by reason of poverty to pay such fees (39 & 40 Vict. c. 79, s. 10); nor the receipt of medical or surgical assistance from the trustees of municipal or county charities; nor the removal by order of a justice to a hospital or place for the reception of the sick at the cost of any local authority; nor the admission of the voter's child to any public or endowed school (M.C.A. s. 33, sub. 4; C.E.A. s. 2, sub. 2); nor the admission of any person suffering from infectious disease into any hospital provided by the managers of the Metropolitan Asylum District (46 & 47 Vict. c. 35, s. 7); nor the receipt of medical or surgical assistance at the expense of any poor rate (48 & 49 Vict. c. 46, s. 2; and see *Honeybourne v. Hambridge*, 18 Q. B. D. 418).

What is not  
parochial  
relief.

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## Other alms.

The word "parochial" applies to "alms" as well as to relief, and the provision consequently applies only to such alms as are parochial (*R. v. Mayor of Lichfield*, 2 Q. B. 693; and see *R. v. Halesworth*, 3 B. & Ad. 717); and, therefore, it would seem that it does not include the receipt of money distributed annually from the income of a public charitable institution established by an individual for the poor of the borough or county not receiving relief from any parish therein (*ib.*; but see *Harrison v. Carter*, 2 C. P. D. 26; *Smith v. Hall*, 15 Scott N. S. 485; *Baker v. Town Clerk of Monmouth*, 34 W. R. 64; *Edwards v. Lloyd*, 20 Q. B. D. 302, as to the disqualification of parliamentary voters by receipt of alms).

Lastly, the burgess or county elector must not be disentitled to be enrolled or registered under any Act of Parliament, as to which see *ante*, p. 11.

TEN POUNDS  
OCCUPATION  
QUALIFICA-  
TION.

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The C.E.A. has added the ten pounds occupation qualification to the old burgess qualification, and to the county elector's qualification, and it is therefore necessary to consider this qualification, as such persons, if registered, and otherwise qualified under the M.C.A. as applied to the L.G.A., are qualified for election as county councillors.

Every person who is entitled to be registered as a voter in respect of a ten pounds occupation qualification within the meaning of the provisions of the Registration Act, 1885, which are set out in the schedule to the C.E.A., shall be entitled to be registered as a county elector, and to be enrolled as a burgess, in respect of such qualification, in like manner in all respects as if the sections of the M.C.A. relating to a burgess qualification included the said ten pounds occupation qualification (C.E.A. s. 3).

The provisions above referred to and set out in the above-named schedule, including the amendments necessary to apply these provisions to county electors, are as follows:—

A person entitled to be registered as a voter in respect of a ten pounds occupation qualification in a borough, municipal or parliamentary, or in any part of a county outside the limits of a borough:—



- (a.) must during the whole twelve months immediately preceding the fifteenth day of July have been an occupier as owner or tenant of some land or tenement in a parish [or township] of the clear yearly value of not less than ten pounds ; and
- (b.) must have resided in or within seven miles of the borough or county during six months immediately preceding the fifteenth day of July ; and
- (c.) Such person, or some one else, must during the said twelve months have been rated to all poor rates made in respect of such land or tenement ; and
- (d.) All sums due in respect of the said land or tenement on account of any poor rate made and allowed during the twelve months immediately preceding the fifth day of January next before the registration, or on account of any assessed taxes due before the said fifth day of January, must have been paid on or before the twentieth day of July.

If two or more persons jointly are such occupiers as above mentioned, and the value of the land or tenement is such as to give ten pounds or more for each occupier, each of such occupiers is entitled to be registered as a voter.

If a person has occupied in the borough or county different lands or tenements of the requisite value in immediate succession during the said twelve months, he is entitled in respect of the occupation thereof to be registered as a voter in the parish [or township] in which the last occupied land or tenement is situate.

An occupier or tenant must have either an estate in, or must be a lessee for a term of, the land or tenement. As tenant, the occupation must be as of right under a demise which gives the party an exclusive right to the possession of the thing demised (*Toms v. Luckett*, 5 C. B. 35). A mere servant (*Dobson v. Jones*, 5 M. & G. 112 ; *Clark v. Overseers of Bury St. Edmunds*, 1 C. B. N. S. 23) ; a lodger (*Pitts v. Smedley*, 7 M. & G. 85) ; a licensee (*Smith*

Owner or  
tenant.

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v. *Lancaster*, L. R. 5 C. P. 246) ; or an object of charity (*Heath v. Haynes*, 3 C. B. N. S. 389 ; *Heartley v. Bankes*, 5 C. B. N. S. 40) do not occupy either as owner or tenant ; but an occupier, though only a tenant at will, occupies as tenant (*Rogers v. Harvey*, 5 C. B. N. S. 3).

Land or  
tenement.

“Land” comprehends all things of a permanent substantial nature, and in its ordinary legal signification includes houses or buildings (Co. Litt. 4 a ; 2 Black. Comm. 16, 17) ; “tenement” comprehends everything that may be holden, provided it be of a permanent nature (2 Black. Comm. 17 ; *Dashwood v. Ayles*, 16 Q. B. D. 301). The tenure is immaterial, provided the voter occupies and the value is ten pounds. There seems to be no definition of what is a tenement other than land, incorporated into or applied to this provision ; but as this qualification is taken from the Registration Act, 1885, and as the meaning of “tenement” in that Act appears to be a house, warehouse, counting-house, shop, or other building (see 2 Will. IV. c. 45, s. 27), or any part of a house separately occupied for the purpose of any trade, business, or profession (41 & 42 Vict. c. 26, s. 5), this meaning doubtless applies to tenement in this applied provision. As to what is a house, warehouse, counting-house, shop, or other building, see *ante*, p. 29.

It has not yet been decided whether two or more separate parcels of land or buildings, in different parts of the same borough or county, or whether land in one part of the borough or county, and a building in another part of the same borough or county, each not locally contiguous to the other, may be taken together in order to make up one entire qualification, where each taken separately is not of the requisite clear yearly value of ten pounds (Mack. & L. 155, 156, 157). But it would seem that they may be so taken together, and that it is sufficient if the voter occupies land, or tenement, however divided and held, if the value amounts to ten pounds (Rog. 70).

Clear yearly  
value.

What is clear yearly value is a question of fact to be determined by the revising barrister upon the evidence before him ; and unless from the facts stated by him the

Court is satisfied that his decision is wrong, and absolutely opposed to the facts so stated, they will not review his decision (*Coogan v. Luckett*, 2 C. B. 185). Clear yearly value is what the land or tenement would let for, over and above the ordinary burthens to which a tenant would be liable who took it subject to those burthens (*Coogan v. Luckett*, 2 C. B. 182); but not over or above landlord's repairs or insurance (*Colvill v. Wood*, 2 C. B. 210).

As to the meaning of "resided," see *ante*, p. 30; as to how the seven miles are to be measured, see *ante*, p. 33; as to rating and payment of poor rates, see *ante*, p. 33.

Assessed taxes are such taxes as depend in amount upon the value of the property on which they are imposed, as the property tax, the house tax, and the land tax. Assessed taxes.

With regard to this ten pounds occupation qualification it will be noticed that land unbuilt upon is a sufficient subject of qualification; that the period of residence is six months instead of twelve; that payment of the county rates is not, but that payment of assessed taxes is, part of this qualification; and that joint occupiers are each entitled to be separately registered.

#### *D.—Disqualification for Election.*

A person who holds any office or place of profit, other than that of chairman, in the gift or disposal of the county council, is disqualified for being elected and for being a county councillor (M.C.A. s. 12, sub. 1, *a*). Thus the future county coroner (L.G.A. s. 5, sub. 1), and the county medical officer of health (*ib.* s. 17, sub. 1), are ineligible as county councillors; and so is a person who accepts an office which enables him to make a profit, even though he does not receive the profit himself, but allows another to do so (*Delane v. Hillcoat*, 9 B. & C. 310). But where there is a body distinct and separate from the county council, *e.g.* the committee of visitors of a lunatic asylum under the Lunatic Asylums Act, 1853, OFFICE OR  
PLACE OF  
PROFIT.  

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CHAP. IV. the holding of an office or place of profit under such a body does not, it is submitted, disqualify for election as a county councillor, even though the funds of the separate body are derived from the county rates. And there seems to be nothing to render ineligible the partner of a person holding an office or place of profit.

Unsalaries office.

An office to which no salary has been assigned, or to which the salary is contingent on the assignment of duties which also have never been assigned, is not an office of profit (*R. v. Barford*, Rawlinson, 92).

The disqualification ceases as soon as the office ceases (M.C.A. s. 12, sub. 1).

SHARE OR INTEREST IN CONTRACT OR EMPLOYMENT.

A person who has directly or indirectly, by himself or his partner, any share or interest in any contract or employment with, by, or on behalf of the county council, and not being a share or interest in:—

- (a.) any lease, sale, or purchase of land, or any agreement for the same ; or
- (b.) any agreement for the loan of money, or any security for the payment of money only ; or
- (c.) any newspaper in which any advertisement relating to the affairs of the county or county council is inserted ; or
- (d.) any company which contracts with the county council for lighting or supplying with water or insuring against fire any part of the county ; or
- (e.) any railway company, or any incorporated company,

is disqualified for being elected or for being a county councillor while he thus has any such share or interest (M.C.A. s. 12, sub. 1, c, and sub. 2).

Goods sold or work done.

A contract whereby goods are supplied to, or work is done for, the county council is within this provision (*Woolley v. Kay*, 1 H. & N. 307 ; *Nicholson v. Fields*, 7 H. & N. 810 ; *Fletcher v. Hudson*, 7 Q. B. D. 611) ; and the contract is not the less a contract because it is small in amount (*Lewis v. Carr*, 1 Ex. D. 487 ; *Nicholson v. Fields*, 7 H. & N. 816 ; but see *Woolley v. Kay*, 1 H. & N. 307).

But where the goods supplied are such as the county

council are bound to supply to all comers, such as gas or water by a town council, and the supply is of the ordinary kind, and at the same price, and upon the same conditions as those which apply in the case of all applicants, no disqualification can, it is submitted, arise, as such a contract is not within the mischief intended to be aimed at.

A sub-contractor is, perhaps, not within the sub-section (*Le Feuvre v. Lankester*, 3 E. & B. 530; but see *Towsey v. White*, 5 B. & C. 125; *Tomkins v. Jolliffe*, 51 J. P. 247, and cases there cited). Sub-contractor.

If the contractor is a mere trustee for the county councillor, the latter has an interest in the contract, and is disqualified (see *Simpson v. Ready*, 12 M. & W. 736). Trustee.

If the contract has been assigned, although the assignment has not been formally completed, the assignor has no longer any interest in the contract within the meaning of the section (see *Dartmouth, B. & Arn.* 460; *Maidstone*, Rog. 1204). But if a county councillor lends money to a contractor to enable the latter to carry out his contract, and takes an assignment of that contract by way of security for his loan, he is disqualified as having an interest in the contractor's contract with the county council (*Hunnings v. Williamson*, 11 Q. B. D. 533). Assignment of contract.

The contract or employment must be continuing; where it has been fully performed, and there is nothing for the contractor to do but to receive payment, no disqualification arises (*Royse v. Birley*, L. R. 4 C. P. 296; *Lewis v. Carr*, 1 Ex. D. 484; *Woolley v. Kay*, 1 H. & N. 307). Contract must be continuing.

The contract may disqualify, even though the county councillor cannot sue on the contract for want of the corporate seal (*R. v. Francis*, 18 Q. B. 526). Invalid contract.

A contract with a pre-existing body whose powers have been transferred to the county council, may be a contract within this provision (see *Le Feuvre v. Lankester*, 3 E. & B. 530). Contract with pre-existing body.

A contract entered into without the knowledge of the county councillor, or against his orders, and of which Secret contract.



CHAP. IV. he takes no benefit, does not, it would seem, disqualify  
 ——— (*Miles v. McIlwraith*, 8 App. Cas. 120).

Partner's  
interest in  
contract.

The interest which a partner of a county councillor has in a contract or employment by the county council, does not disqualify the county councillor, if the latter takes no interest in the contract or employment, and if no such interest can be traced through the partnership affairs.

MISAPPLICA-  
TION OF  
CORPORATE  
PROPERTY.

Any member of the county council who has been convicted of the misdemeanour named in M.C.A. s. 124, sub. 6, viz., who has authorized or directed any payment or application of corporate property forbidden by M.C.A. s. 124, or who has assented to, or concurred or participated in, any affirmative vote or proceeding relating thereto, or who has signed or sealed in his individual capacity, or affixed the corporate seal to any instrument by that section declared void, is disqualified for being elected, or for being a county councillor (M.C.A. s. 124, sub. 6). It will be observed that there is no disqualification until conviction.

The following persons are also disqualified for being elected, or for being county councillors:—

BANKRUPTS.

An undischarged bankrupt (M.C.A. s. 39, subs. 1, 3, and see further hereon, *post*, p. 193).

Compounding  
debtors.

A debtor who compounds by deed with his creditors, and has not paid his debts in full, or who makes an arrangement or composition with his creditors by deed or otherwise, and has not paid his debts in full or obtained his certificate of discharge (M.C.A. s. 39, subs. 1, 3, and see further hereon, *post*, p. 193).

CORRUPT  
PRACTICES.

At parlia-  
mentary  
elections.

A person convicted on indictment, or reported guilty by an election court, within seven years last past, of any corrupt practice at a parliamentary election (C.I.P.P.A. s. 6, sub. 3; ss. 4, 64). This disqualification is unlimited as to the area over which it extends, and such a person is therefore disqualified during the above period throughout England and Wales.

At municipal  
elections.

A person convicted, or reported guilty by an election court, within seven years last past, of any corrupt practice at a municipal election (M.E.C.I.P.A. s. 2,

sub. 2; s. 3, sub. 1). This disqualification is also unlimited as to the area over which it extends. A person reported by an election court guilty, by his agents, of any corrupt practice at a municipal election, is disqualified for three years from the date of the report in respect of the borough in which the offence was committed (M.E.C.I.P.A. s. 3, sub. 2).

CHAP. IV.

The disqualification for corrupt practices at local government elections is the same as at municipal elections (L.G.A. ss. 2, 75).

At local government elections.

A person convicted of a corrupt practice at a school board election is disqualified for six years after such election from holding any municipal office (36 & 37 Vict. c. 86, s. 8), and therefore any local government office (L.G.A. ss. 2, 75). This disqualification is also unlimited as to the area over which it extends, and such a person is therefore disqualified during the above period for election as a county councillor in any part of England or Wales.

At school board elections.

A person convicted, or reported guilty by an election court, within seven years last past, of any corrupt practice at any of the following elections, viz.: member of a local board, member of improvement commissioners, poor law guardian, member of school board, is disqualified for being elected or for being a county councillor (M.E.C.I.P.A. s. 36). The report must distinctly find the person guilty of the offence; a mere statement of facts from which guilt may be inferred is insufficient (*Grant v. Overseers of Pagham*, 3 C. P. D. 80). A person reported, within three years last past, by an election court, guilty by his agents of any corrupt practice at any of the above elections held in the district for which he stands as candidate, is similarly disqualified (M.E.C.I.P.A. s. 36). As to school board elections it may be a question whether these provisions do not impliedly repeal those in the Elementary Education Act (36 & 37 Vict. c. 86, s. 8) quoted above.

At other elections.

A person convicted of an illegal practice at a parliamentary election is incapable, during five years from the date of his conviction, of being registered as an elector, or voting at any election for a public office held for or

ILLEGAL PRACTICES.

At parliamentary elections.



CHAP. IV. — within the county or borough in which the illegal practice was committed (C.I.P.P.A. ss. 10, 64). Such a person is therefore incapable of being registered as a county elector, and is thus, during a like period, disqualified for election as a county councillor at any election held within such county or borough (M.C.A. s. 11, sub. 2, *a*).

At municipal  
and other  
elections.

A person convicted of an illegal practice at a municipal election, or at an election for a member of a local board, or improvement commissioners, poor law guardian, or member of school board, is incapable, during five years from the date of his conviction, of being registered as an elector, or voting at any election for a public office, held for or within the borough or district in which the illegal practice was committed (M.E.C.I.P.A. ss. 7, 36, 34); and is therefore incapable of being elected during a like period at any county councillor's election held within such borough or district (M.C.A. s. 11, sub. 2, *a*).

Any candidate at any of the above elections whose election has been avoided for extensive illegal practices or illegal payments, etc., at such election, shall not, during the period for which he was elected to serve, or for which, if elected, he might have served, be capable of being elected to or holding any corporate office in the said borough or district (M.E.C.I.P.A. ss. 18, 36).

TREASON AND  
FELONY. —

A person convicted of treason or felony, and sentenced to death or penal servitude, or imprisonment with hard labour, or exceeding twelve months, who has not endured the punishment to which he has been adjudged, or received a free pardon, cannot hold any public appointment (33 & 34 Vict. c. 23, s. 2; and see further hereon Election Agent, p. 59). Such a person is therefore disqualified for election as a county councillor (M.C.A. s. 11, sub. 2, *a*), but there is no disqualification until conviction, (see 1 Roe. 116; *New Ross*, 2 P. R. & D. 189), and if an appeal or error be pending, the disqualification does not, it would seem, attach.

OFFICERS.  
—  
Army.

Any commissioned officer in the army on full pay is incapable of being nominated or elected to, or of holding, any office in any municipal corporation (44 & 45 Vict.

c. 58, s. 146) and therefore in any county council (L.G.A. ss. 2, 75). This provision does not apply to officers of the militia, yeomanry, or volunteers, even though the battalion or corps to which they belong be assembled for training at the time of nomination or election, or during their tenure of office (44 & 45 Vict. c. 58 s. 181, sub. 5). CHAP. IV.

As to the penalties on a county councillor who acts before he has taken the declaration of acceptance of office, or who neglects to take that declaration, or who acts after he has ceased to be qualified, see *post*, p. 186.

### *E.—Exemptions from Service as County Councillors.*

The following persons are exempt from serving the offices of county councillor, county alderman, and chairman of county council. The statutes giving the exemption are not all directly incorporated into the L.G.A., but inasmuch as the county council is to be constituted and elected in like manner as a town council (L.G.A. s. 2), they are all applied thereto.

Any person disabled by lunacy or imbecility of mind, or by deafness, blindness, or any other permanent infirmity of body (M.C.A. s. 34, sub. 3, *a*). LUNATICS,  
ETC.

Any person who, being above the age of sixty-five years, claims exemption within five days after notice of his election (M.C.A. s. 34, sub. 3, *b*). PERSONS WHO  
Are above 65  
years old.

Any person who, having within five years before the day of his election served the office to which he has been elected, claims exemption within five days after notice of his election (M.C.A. s. 34, sub. 3, *b*). Have  
already served.

Any person who, having within five years before the day of his election, paid the fine for non-acceptance of office, claims exemption within five days after notice of his election (M.C.A. s. 34, sub. 3, *b*). Have paid  
the fine.

Any person who pays the fine for non-acceptance of the office to which he has been elected (M.C.A. s. 34, sub. 1).

Any person enabled by law to make an affirmation instead of taking an oath, and who refuses on conscientious grounds to take any oath or make any declaration REFUSAL ON  
CONSCIEN-  
TIOUS  
GROUNDS.

CHAP. IV. —	required by the M.C.A., or to take on himself the duties of the office to which he has been elected (M.C.A. s. 36, sub. 3).
OFFICERS. —	Any military, naval, or marine officer in H. M.'s service on full pay or half pay, and any officer or other person employed and residing in any of H. M.'s dockyards, victualling establishments, arsenals, barracks, or other naval or military establishments (M.C.A. s. 253).
Military and naval.	
Reserved forces.	Men enrolled and officers and non-commissioned officers appointed under the Reserve Forces Act, 1867 (30 & 31 Vict. c. 110, s. 17).
Excise officers.	Any officer of excise and person employed in the collection or management of the revenue of excise (7 & 8 Geo. IV. c. 53, s. 11).
Registrars of births, etc.	Registrars of births, deaths, or marriages (7 Will. IV. & 1 Vict. c. 22, s. 18).
Postal officers.	The postmaster-general and any officer of the post-office (7 Will. IV. & 1 Vict. c. 33, s. 12).
Inland Revenue officers.	Any officer or person appointed or employed by the commissioners of inland revenue (16 & 17 Vict. c. 59, s. 17).
Customs officers.	Any commissioner, officer, clerk, or other person acting in the management or service of the customs (39 & 40 Vict. c. 36, s. 9).
Factory inspectors.	Inspectors of factories under the Factory and Workshop Act, 1878 (41 Vict. c. 16, s. 67).
PROFES- SIONAL MEN. —	Any medical practitioner registered under the Medical Act, 1858 (21 & 22 Vict. c. 90, s. 35).
Medical practitioners. Dentists.	Dentists registered under the Dentists Act, 1878 (41 & 42 Vict. c. 33, s. 30).

### III. THE ELECTION STAFF.

WHAT PAID AGENTS MAY BE EMPLOYED.  
—

It is by no means easy to determine what agents a candidate may safely employ for payment at a local government election of a county councillor. There is no election agent in the sense in which that term is used at a parliamentary election; and though the legislature has on several occasions recognised the necessity of a

candidate at a municipal election employing agents to assist him in his election, it has apparently never arrived at a clear decision as to what extent it will authorise or disallow such paid assistance. CHAP. IV.  
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The first statute dealing with the subject is the M.C.A. Under the  
M.C.A. That Act by s. 58. sub. 6, as modified by L.G.A., s. 75, enacts that "nothing in the B.A., as applied by this Act, shall be deemed to authorise the appointment of any agents of a candidate at a local government election; but if, in the case of a local government election, an agent of a candidate is appointed, and notice in writing of the appointment is given to the returning officer one clear day before the polling day, then the provisions of the B.A. with respect to agents of candidates shall, as far as regards that agent, apply in the case of that election." Certainly this is not a very happy way of expressing whatever meaning was intended to be conveyed, for the section commences by saying that nothing shall be deemed to authorise the appointment of any agents, and ends by authorising the appointment of an agent provided the specified notice is given. Upon this enactment it is to be observed that it contemplates the appointment of one agent, and not of any greater number, one clear day before the polling day, and not at any earlier period, or in respect of any proceedings anterior to that one clear day.

By sch. III. pt. II. r. 11, of that same Act, the M.C.A., as modified by L.G.A. s. 75, sub. 4, each candidate may, in Candidate's  
representative. manner therein prescribed (as to which see *post*, p. 101), "appoint a person to attend the proceedings before the returning officer." These proceedings take place six days at least before the polling day, and therefore this power to appoint this particular agent is clearly additional to that contained in M.C.A., s. 58, sub. 6, above quoted.

The next statute dealing with the subject is the M.E.C.I.P.A. Under the  
M.E.C.I.P.A. That Act by s. 5, sub. 1, specifies the maximum expense that may be incurred "on account of or in respect of the conduct or management of the election" of a councillor; and then, in sub. 4 of the same

## CHAP. IV.

section, speaks of two or more candidates by their agent or agents hiring or using the same committee rooms, or employing or using the services of the same clerks or messengers. These agents must, unless they can be denominated "clerks or messengers," act gratuitously, for by s. 13, sub. 1, of the same Act (M.E.C.I.P.A.), as modified by L.G.A., s. 75, it is enacted that no person shall for the purpose of promoting or procuring the election of a candidate at a local government election be engaged or employed for payment or promise of payment for any purpose or in any capacity whatever, except as follows (that is to say),

Clerks and  
messengers.

(a.) a number of persons may be employed, not exceeding two for a county or electoral division, and if the number of electors in such county or electoral division exceeds 2000, one additional person may be employed for every thousand electors and incomplete part of a thousand electors over and above the said 2000, and such persons may be employed as clerks and messengers, or in either capacity ; and

Pollingagents.

(b.) one polling agent may be employed in each polling station.

Provided that this section shall not apply to any engagement or employment for carrying into effect a contract *bonâ fide* made with any person in the ordinary course of business.

It further enacts that if any person is engaged or employed in contravention of the last quoted sub-section, either before, during, or after an election, the person engaging or employing him shall be guilty of illegal employment, and the person so engaged or employed shall also be guilty of illegal employment if he knew that he was engaged or employed in contravention of this Act (M.E.C.I.P.A., s. 13, sub. 2). And if the illegal employment be by the candidate or with his knowledge and consent, his election is avoided (*ib.* s. 17, sub. 2 ; s. 8, sub. 2). For the purposes of calculating the number of clerks and messengers that may be employed, the number of electors shall be taken according to the enumera-



tion of the electors in the burgess roll (M.E.C.I.P.A. s. 34), or register of county electors (*ib.* ; L.G.A. s. 75), and consequently no deductions need be made for absentees, deaths, or the like.

Upon this enactment it is to be observed that it does not repeal the provisions of the M.C.A. ; that its object is to limit the number of paid agents who may be employed to assist in "promoting or procuring the election of a candidate" ; that the word election is in the M.C.A. generally used as meaning the poll or polling day, and that the M.E.C.I.P.A. in no way affects the proceedings of the nomination which take place several days before the polling day ; that there is no writ of election, or date as from which an election may be said to commence, and that thus this enactment of the M.E.C.I.P.A. must, it is submitted, be taken to leave the power to appoint "a person to attend the proceedings before the returning officer" where it was before that Act (the M.E.C.I.P.A.) passed, and not to anticipate that such person will attend those proceedings without fee or payment. It is further to be observed that this enactment only authorises the employment for payment of a certain number of clerks and messengers, and of one polling agent for each polling station.

Later on, this same statute (the M.E.C.I.P.A.), when dealing with the payment of election expenses of a councillor, and the return and declaration to be made respecting such expenses, speaks of *agents* of the candidate, and contemplates payments being incurred by agents on behalf of a candidate, and provides therefor in the form of declaration as to expenses which it prescribes (see s. 21, subs. 1, 2, 3, 7 ; sch. IV. ; and No. 5, *post*, p. 232).

Except so far as these agents are employed after the conduct or management of the election is at an end (as to which see *post*, p. 157), they must, it is submitted, be unpaid agents.

The provisions of the B.A. which apply when an agent is appointed under M.C.A. s. 58, sub. 6 (see *ante*, p. 49), are rr. 21, 26, 29, relative to polling agents ;

Under the B.A.  
Polling agents.

CHAP. IV. s. 2 and rr. 31, 32, 33, 34, 35, 36, 37, 52, relative to  
 Counting agents. counting agents; and s. 4. and rr. 51, 53, 54, 55, relative to both polling agents and counting agents. These provisions do not affect the consideration of what agents may be employed for payment. Separate and distinct individuals cannot be employed for payment as counting agents at parliamentary elections (see Election Agent, p. 24), and therefore in this respect the law relating to parliamentary, municipal, and local government elections does not differ.

Effect of the  
 different  
 enactments.

The combined effect of these different enactments therefore appears to be to authorise the employment for payment by a candidate at a county councillor's election of:—

- (1.) One person to attend the proceedings before the returning officer (see *ante*, p. 49, and *post*, p. 101).
- (2.) A number of clerks and messengers dependent on the number of electors, viz. :—

1 to 2000 electors, two clerks and			
		messengers.	
2001 to 3000	„	three	„
3001 to 4000	„	four	„
4001 to 5000	„	five	„
5001 to 6000	„	six	„

and so on, adding one more clerk or messenger for each additional one thousand or incomplete part of one thousand electors (see *ante*, p. 50).

- (3.) One polling agent for each polling station (see *ante*, p. 50).
- (4.) An agent or agents to assist in the payment and settlement of the election expenses and return after the conduct or management of the election is at an end (see *ante*, p. 51, and *post*, p. 161 *et seq.* But until this construction has received judicial sanction, the power to employ these agents for payment must be considered as doubtful.



The saving clause in the proviso to M.E.C.I.P.A. s. 13, sub. 1 (see *ante*, p. 50), apparently protects any legitimate contract for printing, etc., or other work done in the ordinary course of business, but does not enlarge the power of obtaining additional clerical or messenger assistance or work.

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INCAPACITIES.

All persons employed for payment under M.E.C.I.P.A. s. 13, sub. 1, as clerks, messengers, or polling agents, may or may not be electors, but may not vote (*ib.* sub. 3, and see *ante*, p. 13).

Paid clerks, messengers and polling agents must not vote.

There is no restriction on the number of volunteer and unpaid assistants the candidate may employ, nor in respect of the purposes or capacities in which they may be employed.

VOLUNTEER ASSISTANTS.

It must be remembered that every assistant, whether a paid agent or an unpaid volunteer, is an agent for whose acts the candidate may be responsible, and by whose misdeeds his election may be avoided, and his future qualification and franchise affected (see Election Agent, Chap. XXVI., p. 337).

All assistants may be agents.

Every agent authorised to attend at a polling station, or at the counting of the votes, shall, before the opening of the poll, make the statutory declaration of secrecy before the returning officer or a justice of the peace (B.A. r. 54). Section 4 of the B.A. referred to in the declaration must be read to the declarant by the person taking the declaration (*ib.* sch. II., note to form of declaration). The form of declaration is given in B.A. sch. II., and Election Agent, p. 482.

DECLARATION OF SECRECY.

How taken.

## THE RETURNING OFFICER, HIS STAFF AND CHARGES.

### I.—THE RETURNING OFFICER.

### II.—THE RETURNING OFFICER'S STAFF.

### III.—THE RETURNING OFFICER'S CHARGES.

#### I.—THE RETURNING OFFICER.

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#### III.—THE RETURNING OFFICER'S CHARGES.

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I. THE RETURNING OFFICER.

The sheriff of each county shall be the returning officer for the first election of county councillors, but if the sheriff desires to be a candidate at such election, the county quarter sessions on his application may appoint another person to be the returning officer, and the person so appointed shall, for the purpose of such election, have the powers and duties of the sheriff (L.G.A. s. 103, sub. 2).

WHO IS THE RETURNING OFFICER.

At the first election.

The duty of filling the office of returning officer is *primâ facie*, imposed on the sheriff, and it is not obligatory with the quarter sessions to relieve him therefrom. The sheriff, if he makes the above application, will therefore probably be required to submit the name of some person able, competent, and willing to act in his stead, as well as to adduce satisfactory evidence of a *bonâ fide* desire on his part to become a candidate at the election for which he is returning officer. If the county quarter sessions do not appoint another person as returning officer, the sheriff is compelled to act, and cannot divest himself of that duty.

The sheriff having authority in any administrative county, or the largest part thereof, shall, for the purposes of the L.G.A., be deemed to be the sheriff of that county (L.G.A. s. 103, sub. 10). The expression "administrative county" means the area for which a county council is elected (*ib.* s. 100).

In future elections such person as the county council may appoint shall be the returning officer (L.G.A. s. 75, sub. 2). But as to all casual vacancies arising between the first election and the appointed day (as to what is

At future elections.

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BOROUGH  
ELECTORAL  
DIVISIONS.

that day, see *ib.* s. 109, sub. 1), the sheriff shall be the returning officer (*ib.* s. 107, sub. 2).

In a borough the returning officer for the purpose of the election of councillors of the borough (*i.e.* town councillors) shall continue to be the same as heretofore, and where an electoral division of the county is co-extensive with or wholly comprised in such borough, shall, at the election in such division of a councillor of the county council, act as the returning officer in pursuance of a writ directed to him from the county returning officer, and, so far as respects that election, shall follow the instructions of, and return the names of the persons elected to, the county returning officer in like manner as if he were a deputy returning officer, and any decision of an objection shall be subject to revision by the county returning officer accordingly, and a reference in the M.C.A., and Acts amending that Act, to the town clerk shall, as respects the borough, be construed to refer to the town clerk (L.G.A. s. 75, sub. 6). This provision, which was no doubt introduced to save the rights of municipal corporations, and with a view to avoid interference by county officials from outside the borough, is extremely difficult to construe or to put into practical effect, and apparently leads to some startling conclusions.

Construction  
of the enact-  
ment.

The first points to consider are, who is "the returning officer" in a borough, and what is meant by the word "election." Now at an election of town councillors for a whole borough, the returning officer is the mayor (M.C.A. s. 53, sub. 1), but at an election of town councillors for a ward, the returning officer is the alderman assigned for that purpose by the town council (*ib.* sub. 2). Whether the election be for a whole borough, or for a borough divided into wards, the adjudication on objections to nomination papers (*ib.* sch. III. part II. r. 9), and the preparations for taking the poll are performed by the mayor (*ib.* sch. III. part III. rr. 2, 3, 4) as mayor, not as returning officer; and until the day of election, the mayor or alderman, as returning officer, possesses no function whatever in relation to the election (*Pritchard v. Mayor, etc. of Bangor*, 13 App. Cas. 258). The word

“election” in the M.C.A. refers to the operation which culminates in the choice of the person elected; but the “nomination” and the preparations for the poll precede the “day of election,” and whether there be a contest or not, no election is completed, and the names of the persons elected are not published or returned by the returning officer, until the day of election arrives. A county council is to be elected in like manner as the council of a borough divided into wards (L.G.A. s. 2, sub. 1), and a reference in the L.G.A., or in the enactments applied by the L.G.A. (*i.e.* the M.C.A. and the enactments amending the M.C.A.), to the returning officer, or to the mayor, or to the alderman, is to be construed to refer to the returning officer and his deputy (L.G.A. s. 75, sub. 4), *i.e.* the returning officer appointed by the county council in substitution for the mayor, and for the aldermen assigned for that purpose by the town council (*ib.* sub. 2), and at the first election, the sheriff (*ib.* s. 103, sub. 2).

So far, the L.G.A. combines in one individual, the returning officer, the divers functions which in a municipal election are shared between the mayor and the returning officer (see *Pritchard v. Mayor, etc. of Bangor*, 13 App. Cas. 248, 256); and when it (the L.G.A.) proceeds to deal with the particular case of an electoral division of a county which is co-extensive with, or wholly comprised in a borough (L.G.A. s. 75, sub. 6), it leaves the operations preceding the day of election (*viz.* the adjudication on objections to nomination papers and the preparations for the poll) in the official in whom it has, by the preceding subsection (sub. 4), already invested them, and makes no further change in that respect. But with regard to the operations on the day of election, which at a municipal election in a whole borough are performed by the mayor, and in a borough divided into wards are performed by the alderman as returning officer, it enacts that that official shall, at the election in such division of a county councillor, act as the returning officer in pursuance of a writ directed to him from the county returning officer. In other words, the word “election” in this sub. 6 does not include the adjudication on nominations

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Writ to  
borough  
returning  
officer.

or the preparations for the poll, and the term "returning officer" refers to the alderman, and not to the mayor, except in the case of a whole borough. The writ issued by the county returning officer is therefore to be directed to the mayor in the case of a whole borough, and to the alderman of each ward in the case of a borough divided into wards; and as the town clerk in a borough prepares and signs the notice of election, such writ should be sent before the time limited for giving such notice of election (as to what is that time, see *post*, p. 88). For a form of such writ, see No. 18, *post*, p. 246.

Where an electoral division of a county does not coincide with a ward of the borough, so that no one alderman can be said to be the returning officer of that electoral division, application must, as respects the first election, be made to the Local Government Board to appoint a returning officer (see *post*, p. 59). Where the electoral division is not co-extensive with, or wholly comprised in a borough, L.G.A. s. 75, sub. 6, does not apply.

Effect of the  
enactment.

The system thus promulgated for the election of county councillors in an electoral division, being or forming part of a borough, is somewhat complicated, and may here be summarized as follows :—The county returning officer fixes the day of election for the first election (see *post*, pp. 89, 90), and issues his writ to the borough returning officer. The town clerk prepares, signs, and publishes the notice of election (see *post*, p. 88), provides and supplies the forms of nomination paper (see *post*, p. 94), which on request are filled up by him (see *post*, p. 94), and are delivered at his office (see *post*, p. 100). The town clerk sends notice of the nominations to each candidate (see *post*, p. 101), receives the appointment of candidate's representative (see *post*, p. 102), and the notice of a candidate's withdrawal (see *post*, p. 105). The county returning officer, or his deputy, attends at the town hall to hear and decide objections to nomination papers (see *post*, p. 102). The town clerk publishes the names, etc., of persons validly nominated (see *post*, p. 107), and



where there is no contest the borough returning officer publishes the list of persons elected (see *post*, p. 107), and returns their names to the county returning officer (see *ante*, p. 56). Where there is a contest, the county returning officer provides everything which is required for the purpose of a poll, and the borough returning officer conducts the poll, counts the votes, gives a casting vote if need be, declares the result of such counting (see *post*, pp. 116, 123, 137, and *Pritchard v. Mayor, etc. of Bangor*, 13 App. Cas. 252), and returns the names of the persons elected to the county returning officer (see *ante*, p. 56). The decision of the borough returning officer on any question arising on a ballot paper is subject to revision by the county returning officer (see *post*, p. 147), and the decision of the latter is final, subject to reversal on petition questioning the election or return.

It is obligatory on the borough returning officer to act in pursuance of the writ directed to him from the county returning officer, and if he neglects or refuses to do so he is liable to a fine of £100 (M.C.A. s. 75, sub. 1).

If from any cause there is no returning officer able to act *in any county* at the first election of a county council, the Local Government Board may by order appoint a returning officer, and any such order may modify the provisions of the L.G.A. and the enactments applied by the L.G.A. so far as may appear to the Board necessary for the proper holding of the first election (L.G.A. s. 108, sub. 1). This enactment does not appear to provide for the case of there being no returning officer for an electoral division being a borough or part of a borough, but the power to modify the provisions of the L.G.A. will doubtless cure any difficulty arising in that respect. The illness or absence of the county returning officer; the failure of any town council to appoint an alderman as returning officer; or the fact that the ward of the municipal borough for which any such alderman is appointed returning officer, does not coincide in area with the electoral division comprised in such borough, are instances which would probably be held to put this provision into operation.

APPOINT-  
MENT BY  
LOCAL  
GOVERNMENT  
BOARD.



CHAP. V.  
 ILLNESS OR  
 ABSENCE.

Sheriff.  
 Mayor.

Alderman.

There is no provision for the illness or absence of the sheriff of a county (see Election Agent, p. 30), other than L.G.A. s. 108, sub. 1, above quoted. But in case of the absence or incapacity to act of the mayor of a municipal borough, the town council shall forthwith choose an alderman to execute the powers and duties of the mayor in his place (M.C.A. s. 67, sub. 1). And in case of the illness, absence, or incapacity to act of the alderman assigned to be the returning officer at a ward election of a municipal borough, the mayor may appoint to act in his stead another alderman, or, if the number of aldermen does not exceed the number of wards, a councillor not being a councillor for that ward, and not being enrolled in the ward roll for that ward (M.C.A. s. 67, sub. 2).

DEATH.  
 Sheriff.

If the sheriff of a county die before the expiration of his year of office, or before he is lawfully superseded, the under-sheriff continues in his office, and executes the same and all things belonging thereunto in the name of the deceased sheriff, until another be appointed (50 & 51 Vict. c. 55, s. 25, sub. 1); if the sheriff's year of office expires after the election and before the return, his successor may make the return with a special mention of the change (see Heyw. Co. 50).

Mayor.

Alderman.

In case of the death of the mayor of a municipal borough, the town council shall forthwith choose an alderman to act in his place (M.C.A. s. 67, sub. 1); and the death of a presiding alderman is doubtless an incapacity to act within M.C.A. s. 67, sub. 2, quoted *supra*. The power of the Local Government Board under L.G.A. s. 108, sub. 1, quoted *ante*, p. 59, will also cure any difficulty in respect of the first election.

DEPUTY.

The returning officer, without prejudice to any other power, may by writing under his hand appoint a fit person to be his deputy for all or any of the purposes relating to the election of any county councillor, and may by himself or such deputy exercise any powers and do any things which a returning officer is authorised or required to exercise or do in relation to such election, and shall for the purposes of the election have all the

powers of the sheriff (L.G.A. s. 75, sub. 3). Such a deputy cannot be appointed, and is not bound to act against his own will, and he thus may demand any fee or remuneration which he may fix as the value of his services. The word "powers" includes rights, jurisdiction, capacities, privileges, and immunities (*ib.* s. 100).

A deputy may be appointed for some specific purpose only, *e.g.* to attend at the nomination, or at the poll, and not elsewhere, or he may be appointed generally to conduct the whole election. It is not clear whether, when appointed, the deputy so replaces the returning officer as to relieve the latter from all responsibility; in any case, the returning officer would be bound to show that the deputy was a "fit" person, and that he exercised due care and judgment in his selection and appointment. The deputy must not be a minor (see *Belfast*, B. & Aust. 555). There seems to be no objection to appointing two (or more) deputies to take different parts in one election, but such appointments are likely to produce confusion.

The returning officer takes the statutory declaration of secrecy before a justice of the peace (B.A. r. 54). Section 4 of the B.A. referred to in the declaration must be read to the declarant by the justice of the peace taking the declaration (*ib.* sch. II., note to form of declaration).

No returning officer, nor his deputy, nor any partner or clerk of either of them, nor any officer appointed by the returning officer, nor any partner or clerk of any such officer, shall act as agent for any candidate in the management or conduct of his election, under penalty of a misdemeanor (B.A. s. 11; 30 & 31 Vict. c. 102, s. 50). As to the vote and casting vote of a returning officer, see *ante*, p. 13, and *post*, p. 148. A returning officer cannot return himself, and therefore cannot be a candidate at the election over which he presides (see *ante*, p. 24). But he is eligible elsewhere, or as county alderman, or chairman of county council.

An election of a person to the office of county councillor, county alderman, or chairman of county council shall not be liable to be questioned by reason of a defect in the title, or want of title, of the person before

CHAP. V.

General or specific appointment.

DECLARATION OF SECRECY.

How taken.

INCAPACITIES.

Cannot act as candidate's agent.

Vote.

Ineligibility.

WANT OF TITLE.

Does not vitiate election.

CHAP. V. — whom the election was had, if that person was then in actual possession of, or acting in, the office giving the right to preside at the election (M.C.A. s. 42, sub. 2); and no defect in the appointment of a deputy shall invalidate his acts (*ib.* s. 237).

## II. THE RETURNING OFFICER'S STAFF.

The B.A. is applied to the M.C.A. by s. 58, sub. 1; the M.C.A. to local government elections by L.G.A. s. 75.

### GENERAL POWER.

— All necessary officers may be appointed. But no candidate's agent.

The returning officer shall appoint and pay such officers as may be necessary for effectually conducting the election (B.A. s. 8); but no person shall be appointed by a returning officer for the purposes of an election who has been employed by any other person in or about the election (B.A. r. 49); and no officer appointed by the returning officer, nor any partner or clerk of such officer, shall act as agent for any candidate in the management or conduct of his election under penalty of a misdemeanor (B.A. s. 11; 30 & 31 Vict. c. 102, s. 50).

### DECLARA- TION OF SECRECY.

— Every officer or clerk authorised to attend at a polling station, or at the counting of the votes, shall take the declaration of secrecy before the returning officer or a justice of the peace (B.A. r. 54, and see *ante*, p. 61).

### PRESIDING OFFICERS.

— The returning officer shall appoint a presiding officer to preside at each polling station (B.A. r. 21); for a form of appointment, see Election Agent, p. 468. Such presiding officer is entitled to a reasonable fee not exceeding four guineas, and to his travelling expenses not exceeding one shilling per mile if the distance exceeds two miles from his residence (38 & 39 Vict. c. 84, sch. I. part I.; 48 & 49 Vict. c. 62, s. 4; L.G.A. s. 75, sub. 18).

### POLL CLERKS.

— The returning officer shall also appoint poll clerks to assist the presiding officer (B.A. ss. 8, 10), not exceeding in number one for every 500 electors, or fraction thereof beyond the first 500, assigned to such polling station (38 & 39 Vict. c. 84, sch. I. part I.); for a form of appointment, see Election Agent, p. 469. Each poll clerk is entitled to a fee not exceeding thirty shillings

and to his travelling expenses under the same circumstances as a presiding officer (*ib.* ; 48 & 49 Vict. c. 62, s. 4 ; L.G.A. s. 75, sub. 18). For a form of instructions to presiding officers and poll clerks, see Election Agent, p. 492.

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The returning officer may, in addition to any clerks, appoint competent persons to assist him in counting the votes (B.A. r. 48), not exceeding six such clerks or persons where the number of registered electors does not exceed 3000, and one for every additional 2000 electors (38 & 39 Vict. c. 84, sch. I. part I. ; L.G.A. s. 75, sub. 18). Each such clerk or person is entitled to a fee not exceeding one guinea, and to travelling expenses under the same circumstances as a presiding officer (*ib.*).

COUNTING  
ASSISTANTS.

The returning officer may also avail himself of the assistance of any additional persons who are willing to act voluntarily and gratuitously. Such persons must take the declaration of secrecy if they assist either at the polling station or at the counting of the votes (see *ante*, p. 61). See further as to the returning officer's staff, Election Agent p. 34.

VOLUNTEER  
ASSISTANTS.

### III. THE RETURNING OFFICER'S CHARGES.

A county council shall, on the request of the returning officer, prior to a poll being taken at any election of a councillor of such council, advance to him such sum not exceeding ten pounds for every thousand electors at the election as he may require (L.G.A. s. 75, sub. 20) ; and at the first election, the court of quarter sessions in any county, and the Metropolitan Board of Works in the Metropolis, shall advance to the returning officer such sum as is authorised to be advanced by county councils to returning officers for the purposes of an election (*ib.* s. 103, sub. 9). This advance is merely on account, and credit must be given for it by the returning officer in the account he subsequently sends in to the county council (see *post*, p. 69).

ADVANCE ON  
ACCOUNT.

The costs properly incurred by the returning officer in reference to the first election, and in reference to the first meeting of the provisional council, shall be defrayed

CHARGES,  
HOW  
DEFRAIDED.

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as expenses of the county council, and may be taxed on an application made by, or by direction of, the provisional council (L.G.A. s. 103, sub. 6; and see *ib.* s. 75, sub. 19; and as to the taxation, *post*, p. 69).

SCALE OF  
CHARGES.  

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The said costs shall not exceed those allowed by Part I. of the First Schedule to the Parliamentary Elections (Returning Officers) Act, 1875, as amended by the Parliamentary Elections (Returning Officers) Act, 1885, or by such scale as the county council may from time to time frame (L.G.A. s. 75, sub. 18). Until any such scale is framed the charges to be allowed are governed by the above statutes. The allowances under such statutes are maximum charges, but the charges to be made by the returning officer are in no case to exceed the sums actually and necessarily paid or payable (38 & 39 Vict. c. 84, note at the head of sch. I.).

Object of the  
statutes.

The intention of the statute (38 & 39 Vict. c. 84) as applied by the L.G.A. is, on the one hand, to protect the county council, and therefore the ratepayers, from unreasonable demands of returning officers, and, on the other hand, to indemnify returning officers against all actual expenditure reasonably necessary for the conduct of the election (see *South East Essex*, 19 Q. B. D. 259). It recognises the increased duties which the B. A. has thrown upon returning officers (*ib.*). It does not limit the right of a returning officer to be paid such charges only as he can vouch (*ib.* 258; but see *Shoreditch*, 56 L. T. 530); nor does it limit him to such items as come, *verbatim et literatim*, within the several descriptions in the schedule, if they be services or expenses of one of the kinds mentioned in the schedule (*South East Essex*, 19 Q. B. D. 260). The charges must be reasonable, they must have been properly rendered or incurred for the purposes of the election, and they must not exceed the limits fixed by the scale in the schedule (*ib.*). This statute and schedule have on several occasions come under the consideration of the taxing officers and the courts, and the most important of the reported decisions will now be considered.

Under the item in the schedule "for preparing and



publishing the notice of election," the returning officer is entitled to a fair charge for drawing and settling the notice in addition to all payments for printing, advertising, and posting (*South East Essex*, in Q. B. D., 21 Feb., 1887); but if the drawing or settling is done by some person other than the returning officer himself, a voucher for such other person's charge must be produced in addition to the vouchers for the printing, etc. (*Shoreditch*, 56 L. T. 530). If the returning officer himself prepares and publishes the notice, he may charge the full maximum allowance, and the same cannot, it would seem, be reduced on taxation (*ib.* 531).

CHAP. V.  
STATUTORY  
ALLOWANCES.  
"Notice of  
election."

Under the item "for preparing and supplying the nomination papers," the returning officer is entitled to a fair charge for time and expenses in procuring the forms and "supplying" them to applicants, in addition to the payment for the forms or for printing (*South East Essex*, in Q. B. D., 21 Feb., 1887). But if these services are rendered by any person other than the returning officer himself, a voucher for such other person's charge must be produced in addition to the voucher for the forms or printing (*Shoreditch*, 56 L. T. 530). If the returning officer himself prepares and supplies the nomination papers, he may charge the full maximum allowance of one guinea, and the same cannot, it would seem, be reduced on taxation (*ib.* 531).

"Preparing  
and supplying  
nomination  
papers."

The language of the items in the schedule with respect to the allowance of travelling expenses differs. "For travelling to *and from* the place of nomination, and of declaring the poll at a contested election," the returning officer is entitled to an allowance not exceeding one shilling per mile (38 & 39 Vict. c. 84, sch. I. part I.). "For conveyance of ballot boxes *from* the polling stations *to* the place where the ballot papers are to be counted," he is entitled to a similar allowance (*ib.*); but none is expressly given for conveyance of the ballot boxes *to* the polling station or *from* the place where the ballot papers are to be counted. "For travelling expenses of presiding officers and clerks," he is entitled to a similar allowance (*ib.*); and there being in this case no limit the

"Travelling  
expenses."



## CHAP. V.

allowance may apparently be claimed for the actual distance travelled from the officer's residence to the polling station, thence to the place of counting, and thence back to the officer's residence ; though, according to one county court judge, presiding officers and poll clerks are only entitled to be paid mileage from their residences to the polling stations, and from thence to the place of counting, and not back to their residences (*re Cumberland Elections*, 30 Solicitors' Journal, 749, 755, 772). " Travelling expenses are not to be allowed in the case of any *person* unless for distances exceeding two miles from the place at which he resides " (38 & 39 Vict. c. 84, sch. I. part I. note) ; but this does not apply to the allowance for the conveyance of the ballot boxes from the polling station. The full maximum allowance of one shilling per mile is not to be allowed, unless the sums actually and necessarily paid or payable amount to or exceed that allowance (*South East Essex*, Nov., 1886) ; and the allowance seems to be confined to travelling expenses strictly so called (*e.g.* railway and cab fares, horse hire, etc.), and does not authorize the inclusion therewith of the person's hotel expenses (*ib.*).

" Hire or fitting up of polling stations."

Under the item " for hire or necessary fitting up " of polling stations, a charge for an architect or contractor's superintendence of the work has been allowed. But the returning officer should invite tenders for this work, and should not expend more than is necessary. If one building or room contains two polling stations, a double charge may be made. A charge for posting up the " Directions to Voters " or other notices, cannot be made under this item, as such expense is provided for in the item " for the preparation and publication of notices " (*South East Essex*, Nov., 1886). A charge for writing letters with respect to the hiring or fitting up of polling stations may be included under this item (*South East Essex* in Q. B. D., 21 Feb., 1887), and so also may perhaps be included a charge for firing and lighting.

" Ballot boxes,"

Under the item " for each ballot box purchased," a reasonable charge for the carriage of the boxes from the manufacturers or vendors to the returning officer's place

of business, has been allowed. A charge for storing or keeping old ballot boxes from one election to another in order to avoid the expense of purchasing or hiring new ones, and whereby considerable expense is saved, may be allowed (*South East Essex*, 19 Q. B. D. 260).

A charge for New Testaments or Pentateuchs has been "Stationery." allowed under the item for stationery.

The status of the person appointed as presiding officer "Presiding guides the taxing officer in determining the fee to be officers." allowed (*South East Essex*, Nov., 1886). To a professional man (*e.g.* a barrister or solicitor), the full maximum allowance will in general be made; but the amount to be allowed to a non-professional man (*e.g.* a solicitor's clerk, overseer, schoolmaster, tradesman, etc.) depends on the status of the individual in each case, and is partly determined by analogy to the scale of allowances to witnesses in the High Court of Justice (*ib.*).

The allowance "for the preparation and publication of notices (other than the notice of election)" covers all notices necessarily and properly given, including all posters at the place of nomination, on the polling stations (*South East Essex*, Nov., 1886), and at the place of counting. If the returning officer himself prepares and publishes these notices, he may charge the full maximum allowance, and the same cannot, it would seem, be reduced on taxation (see *Shoreditch*, 56 L. T. 531). "Notices (other than the notice of election)."

A returning officer, and a deputy returning officer, cannot, under the head of "professional and other assistance" or otherwise, charge for "assistance" personally rendered by himself (*Shoreditch*, 56 L. T. 529). But he may obtain "professional and other assistance" from others, and for any such assistance necessarily and properly obtained, he may, under this item, charge for and recover any reasonable charge within the maximum allowed by the schedule to 38 and 39 Vict. c. 84, provided he produces proper vouchers (*ib.*). "Professional and other assistance."

The returning officer must produce vouchers for "All other whatever allowance he claims under the item "for all other expenses." other expenses" (*Shoreditch*, 56 L. T. 529).

Under the item for "professional and other assistance," Police.

CHAP. V.  

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or under this item for "all other expenses," the returning officer often seeks to charge the cost of police. But the police stationed in the polling stations are so stationed by virtue of 6 & 7 Vict. c. 18, s. 90, and in a borough parliamentary election the expense of such police is chargeable upon the poor rate (6 & 7 Vict. c. 18, s. 55). There is no provision as to how such expense is to be charged in a county parliamentary or local government election, but with regard to claiming for police under either of the items above mentioned, the presence of a constable at a polling station to take into custody a person charged with a felony can hardly be said to be an expense for "assistance in and about the conduct of the election," nor does it seem arguable that those words, or the words "all other expenses," are to be construed to include this expense in a county parliamentary election when no such construction is necessary in the case of a borough parliamentary election, and when such a construction would in a borough parliamentary election amount to a repeal, by inference merely, of the express provision in 6 & 7 Vict. c. 18, s. 55. The expense of police engaged in the county or town generally during election times must be paid out of the rate or fund applicable to the general maintenance of the police.

Refreshments. It does not seem possible to charge for refreshments to the presiding officers or poll clerks under the item "for all other expenses," as the supply of refreshments is only another form of payment to them for their services (see *Barrow-in-Furness*, 4 O'M. & H. 80), and the maximum allowances in respect of such officers must not be exceeded. The cost of refreshments supplied to officials should in all cases be treated as part of their remuneration, and be added to the amounts paid to them; and if any maximum limit is not thereby exceeded, the payment for refreshments is lawful, and can be sustained.

UNCON-  
TESTED  
ELECTION.  

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It is doubtful how far a returning officer can charge for preparations for a contest where no contest takes place. If, however, the returning officer can

establish that the time between the nomination and the poll is insufficient, in point of fact, to make the preparations he is compelled to make (see B.A. s. 8), he can probably charge the costs of such preparations as being "reasonable charges" which have been "properly rendered or incurred by him for the purposes of the election" (38 & 39 Vict. c. 84, s. 2).

Within fourteen days after the day on which the return is made, every person having any claim against the returning officer for work, labour, materials, services, or expenses in respect of any contract made with him for the purposes of the election, shall transmit to him the detailed particulars of such claim in writing, and the returning officer shall not be liable in respect of anything which is not duly stated in such particulars; and such claim shall, if the accounts of the returning officer be taxed, be also subject to taxation on notice to the claimant, and the determination of the court thereon shall be final for all purposes and as against all persons (38 & 39 Vict. c. 84, s. 5; L.G.A. s. 75, sub. 19). As to how these fourteen days are computed, see *post*, p. 167.

CLAIMS  
AGAINST  
RETURNING  
OFFICER.

Within twenty-one days after the day on which the return is made, the returning officer shall transmit to the county council a detailed account showing the amounts of all such charges which he claims from the county council; he shall annex to the account a notice of the place where the vouchers relating to the account may be seen, and shall, at all reasonable times and without charge, allow the county council, or any agent of such council, to inspect and take copies of such vouchers; and he shall not be entitled to any charges which are not duly included in his account (38 & 39 Vict. c. 84, s. 4; L.G.A. s. 75, sub. 19). As to how these twenty-one days are computed, see *post*, p. 167.

RETURNING  
OFFICER'S  
ACCOUNT.

If the county council object to any part of the returning officer's claim, they may, at any time within one month from the time when the account is transmitted to them, apply in the City of London to the Lord Mayor's Court, and elsewhere to the county court having jurisdiction at the place of nomination for a taxation of

TAXATION.  
Application,  
when and  
how to be  
made.

## CHAP. V.

the account (38 & 39 Vict. c. 84, s. 4; L.G.A. s. 75, sub. 19). The application should be in writing, it need not be made to the judge personally sitting in court, but should be delivered to the registrar or other officer whose business it is to receive such documents (*R. v. Judge of Bloomsbury County Court*, 17 Q. B. D. 788). There is no power to extend the time within which the application can be made, and if, therefore, it be not made within the above-mentioned fourteen days, it is too late (*ib.*).

Hearing of  
application.

The county court judge is not required to deal with the application within any limited time (*R. v. Judge of Bloomsbury County Court*, 17 Q. B. D. 794), and he may therefore proceed with it in ordinary course. The county council have an absolute right to a taxation; the county court has no discretion to grant or refuse the application (*ib.* 791).

The taxation.

The taxation proceeds "in such manner and at such time and place as the court thinks fit" (38 & 39 Vict. c. 84, s. 4; L.G.A. s. 75, sub. 19). The judge is the person primarily charged with the taxation, but he may delegate that duty to the registrar (*R. v. Judge of Bloomsbury County Court*, 17 Q. B. D. 791), or other principal officer of the court (38 & 39 Vict. c. 84, s. 4; L.G.A. s. 75, sub. 19). The judge usually refers the account to the registrar for taxation, but the taxation is often conducted in open court, and sometimes with counsel attending on behalf of the several parties interested (*Reigate*, 10th March, 1885).

Payments for which proper vouchers cannot be produced should be disallowed (*Shoreditch*, 56 L. T. 529), but the returning officer is not limited to such charges only as he can vouch (*South East Essex*, 19 Q. B. D. 258). A particular item is not to be disallowed merely because it is charged under a wrong heading; if it be a legitimate charge, duly vouched, not unreasonable in itself, and within the maximum when added to the other charges for similar expenditure made under the proper heading, it ought to be allowed (*ib.* 263).

Costs of  
taxation.

The costs of taxation are in the discretion of the county court, or of the registrar if deputed to him



(38 & 39 Vict. c. 84, s. 4; L.G.A. s. 75, sub. 19), and are usually allowed to the returning officer, unless his account is very materially reduced.

CHAP. V.

Judgment may be given for the amount payable to the returning officer, and with or without costs at the discretion of the county court, and such judgment may be enforced as if such judgment were a judgment in an action in such court (38 & 39 Vict. c. 84, s. 4). And the judge or officer by whom the account is taxed shall deliver to the returning officer, and to the other party to the taxation, a certificate showing the items or amounts allowed or disallowed, with a copy of any order or judgment made thereon (49 & 50 Vict. c. 57, s. 1; L.G.A. s. 75, sub. 19).

Judgment  
and certificate  
of taxation.

Either party may, within seven days of the delivery to him of the certificate of taxation, give notice in writing to the judge or officer by whom the account was taxed of intention to appeal, specifying in the notice the items and amounts in respect of which he intends to appeal (49 & 50 Vict. c. 57, s. 1; L.G.A. s. 75, sub. 19). The said judge or officer shall thereupon forthwith transmit to the prescribed taxing officer of the Queen's Bench Division of the High Court of Justice the said account, with any vouchers relating thereto, the certificate and the notice of appeal, and such taxing officer shall forthwith proceed to review the taxation in the usual manner, or in such manner as may be prescribed, and shall, if required, receive evidence in relation to the matters in dispute, and may confirm or vary the certificate, and direct by whom all or any part of the costs of review are to be paid, and shall return the certificate as confirmed or varied to the said judge or officer with any such direction, and effect shall be given to a certificate as so confirmed or varied, and to any such direction, as if the same had been a judgment of the county court (*ib.*). "Prescribed" means prescribed by rules of the Queen's Bench Division of the High Court (*ib.*), but no such rules have yet been made.

REVIEW OF  
TAXATION.

A review of taxation may be appealed in like manner as in any ordinary taxation of costs (49 & 50 Vict.

Appeal from  
review.



CHAP. V. c. 57, s. 1 ; L.G.A. s. 75, sub. 19). This appeal lies first to the judge in chambers, thence to the divisional court of the Queen's Bench Division (*Shoreditch*, 56 L. T. 529 ; but see *South East Essex*, 19 Q. B. D. 252, where the appeal was taken direct from the master to the court). The Act does not in terms give an appeal from the Queen's Bench Division to the Court of Appeal, and the taxation seems to be final (see 38 & 39 Vict. c. 84, s. 4 ; *R. v. Judge of Lambeth County Court*, 17 Q. B. D. 96), subject to the specific appeal now given (49 & 50 Vict. c. 57, s. 1). If, however, there be a right of appeal to the Court of Appeal, the special leave of the Queen's Bench Division appears to be necessary (44 & 45 Vict. c. 68, s. 14), as the Returning Officers Acts are construed as one (49 & 50 Vict. c. 57, s. 2) with the B.A. (38 & 39 Vict. c. 84, s. 1), which again is construed as one with the Registration Acts (B.A. s. 15), which are named in 44 & 45 Vict. c. 68, s. 14 (and see *R. v. Judge of Bloomsbury County Court*, 80 Law Times newspaper 413, in which leave to appeal was applied for).

The "manner" in which an appeal from a review is brought is governed by regs. 39 to 42 of rule 27 of Order LXV. of the Rules of the Supreme Court, 1883. Objections should therefore be carried in before the prescribed taxing officer gives his confirmation or variation of the certificate, and the application to the judge in chambers should be made within fourteen days therefrom. The appeal from the judge to the divisional court is by motion, made within eight days, or on the first day on which the court may be sitting (Rules of Supreme Court, Order LIV. r. 24) ; and notice of motion must be served two clear days before the day named for hearing (*ib.* Order LII. r. 5). The judge and the divisional court may refuse to entertain the appeal if the above-named objections have not been carried in and answered by the prescribed taxing officer (*South East Essex*, 19 Q. B. D. 263 ; *Shoreditch*, 56 L. T. 530).

Discretionary  
items.

In matters which are within the discretion of the taxing officer, the judge and the divisional court will not ordinarily interfere, except in cases of gross abuse or

mistake (*Marcus v. General Steam Navigation Co.*, 35 L. T. 353; *Hargreaves v. Scott*, 4 C. P. D. 21), or where the principle on which the taxing officer has proceeded is erroneous (*Sparrow v. Hill*, 7 Q. B. D. 362; *Paddon v. Winch*, L. R. 20 Eq. 449).

Where application is made for taxation of the returning officer's account, he may apply to the county court to examine any claim transmitted to him by any person claiming against him, and the court, after notice given to such person, and after hearing him, and any evidence tendered by him, may allow or disallow, or reduce the claim objected to, with or without costs (38 & 39 Vict. c. 84, s. 5; L.G.A. s. 75, sub. 19). This examination may be reviewed and appealed in the same manner as a returning officer's account (49 & 50 Vict. c. 57, s. 1; and see *ante*, p. 71).

CHAP. V.

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TAXATION OF  
CLAIMS  
AGAINST  
RETURNING  
OFFICER.  

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## CANVASSERS AND CANVASSING.

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<i>By clerks and messengers</i>	. „	<i>Precautions to be observed</i>	. 75

Canvassing by volunteers. CANVASSING at a county councillor's election on any extensive scale can only be carried on by unpaid volunteers. For, no person shall, for the purpose of promoting or procuring the election of a candidate at a local government election, be engaged or employed for payment or promise of payment for any purpose or in any capacity whatever, except that a certain number of persons, varying according to the number of electors, may be employed as clerks and messengers, or in either capacity (M.E.C.I.P.A. s. 13, sub. 1; L.G.A. s. 75; and see *ante*, p. 50), under penalty of an illegal employment (M.E.C.I.P.A. s. 13, sub. 2). These clerks and messengers may be employed in canvassing, so far as their leisure permits, s. 82 of the M.C.A., which prohibited paid canvassing by electors, being repealed by M.E.C.I.P.A. s. 38; but it is not likely that their other vocations will permit of their engaging in canvassing on any thorough or exhaustive scale.

Risks of a  
volunteer  
canvass.

Canvassing by unpaid volunteers is an extremely hazardous proceeding, as every authorised canvasser is an agent for whose corrupt and illegal acts the candidate is responsible; and the direct contact with the electors, which their occupation necessarily occasions, exposes these canvassers, and their candidate, to many temptations and dangers which it is desirable for every reason to avoid.

If, notwithstanding these risks, a canvass by volunteers be decided on, every canvasser should be appointed by the candidate or his authorised agent, and not by any club, association, or organization; the number so appointed should be as few as possible; each canvasser should be informed that he is an agent, for whose acts the candidate, whom he desires to assist, will be responsible, and that the election may be avoided if he is guilty of any corrupt or illegal practice. The candidate, or his agent, should also hand to every such canvasser, and should paste into every canvass book issued by him, printed instructions as to the acts which will render the election void (for a form, see Election Agent, p. 476). Further, the candidate should mark or initial, number, and keep a careful record of, every canvass book issued by him. If lady canvassers are appointed, he should fully and specially warn them as to all acts which they may and may not do.

Precautions to  
be observed.

## COMMITTEES AND COMMITTEE ROOMS.

## I. COMMITTEES.

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## II. COMMITTEE ROOMS.

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## I. COMMITTEES.

**Definition.** A COMMITTEE is a body of individuals to whom the consideration or ordering of any matter is referred (Latham's Johnson's Dictionary). A committee is a limited number of persons in whom faith and confidence are placed by a candidate, and between whom there exists some privity (*Westminster*, 1 O'M. & H. 92). A body of 600 persons cannot rightly be denominated a committee (*ib.*).

Committee-men may be held to be agents. A committee should consist of as few persons as possible; it should be appointed by the candidate, and not by any club or association; it should not be limited to members of any such club or organization, and each member of the committee should be a person upon whose judgment and discretion the candidate can thoroughly rely. A committee may be, individually as well as collectively, agents for whose acts the candidate is responsible (see Election Agent, p. 343), and, if held

to be such agents, a corrupt or illegal practice committed by any one of them may avoid the election. CHAP. VII.

A committee must not be formed for an illegal object. Illegal committees.  
 Committees were formed, having paid agents at their heads, for the purpose of getting the voters together, so that the latter might be corrupted at any moment at which it might become necessary, and it was held that the proceedings of this committee amounted to bribery (*Stafford*, 21 L. T. 210). Again, while it is permissible Detective committees. to employ a single spy or detective to find out quietly whether corrupt practices are going on in a particular party, it has been laid down that it is illegal to employ a "vigilance committee," or large body of persons, to search actively for corrupt practices, and that if such persons commit violence it will amount to intimidation (*ib.*). A detective committee must, therefore, be very careful that it does not, collectively or individually, interfere actively with any person, and that its investigations are not carried to an extent that might subject it to condemnation.

## II. COMMITTEE ROOMS.

The M.E.C.I.P.A. is applied to local government elections by L.G.A. s. 75.

No affirmative definition of a committee room has been Definition. enacted; but the expression "committee room" shall not include any house or room occupied by a candidate at an election as a dwelling, by reason only of the candidate there transacting business with his agents in relation to such election; nor shall any room or building be deemed to be a committee room by reason only of the candidate, or any agent of the candidate, addressing therein electors, committee men, or others (M.E.C.I.P.A. s. 34; C.I.P.P.A. s. 64). Beyond this, the election court must determine from the circumstances of each particular case, whether a room is or is not a committee room; but by thus speaking of a room *or building*, the legislature seems to imply that a committee room may include more than



## CHAP. VII.

a single room. It therefore seems probable, that if reasonably and *bonâ fide* required, and especially in the case of a central committee room, the term "committee room" would be held to apply to a set of offices, or entire building, comprising a clerk's room or rooms, and a private consultation room, and would not invariably be limited to a single room. Any room, place, or building habitually used for the business of the election, should be treated and deemed to be a committee room by the candidate, both in his return of election expenses, and in all other respects.

Places prohibited as committee rooms.

A committee room must not be in any premises which are licensed for the sale of any intoxicating liquor for consumption on or off the premises, or on which refreshment of any kind (whether food or drink) is ordinarily sold for consumption on the premises ; nor any premises where any intoxicating liquor is supplied to members of a club, society, or association, or any part of any such premises (M.E.C.I.P.A. s. 16, sub. 1, *a*, *b*). If any such prohibited place is hired or used as a committee room, it is an illegal hiring (*ib.*). But any part of any of the above-named premises which is ordinarily let as chambers or offices, or for public meetings or arbitrations, is not within the above prohibition, if such part has a separate entrance, and no direct communication with any part of the premises on which any intoxicating liquor or refreshment is sold or supplied as aforesaid (*ib.* sub. 2 ; and see *Devonport*, 2 T. L. R. 346).

Clubs.

There is no permission, as there is at a parliamentary election, to use the premises of a permanent political club as a committee room (*cf.* C.I.P.P.A. s. 20) ; and such premises cannot therefore be so used, if they come within either subsection of M.E.C.I.P.A. s. 16. The premises of a club where tea, coffee and other non-intoxicant drinks only are *supplied* to members, are not within the prohibition contained in M.E.C.I.P.A. s. 16 sub. 1, *b* ; but, if such drinks are "*sold* for consumption on the premises," such a club falls within the prohibition contained in sub. 1, *a* of the same section.

Licensed premises.

All licensed premises, refreshment houses, and club

houses, where food or drink is sold, are therefore unavailable as committee rooms. The words of M.E.C.I.P.A. s. 16, sub. 1, *b* are also large enough to include the premises of any brewer, wine merchant, etc., who supplies the members of a club, society, or association, with any intoxicating liquor for consumption at their private residences, and such premises should therefore also be avoided.

But the premises of a public elementary school, which cannot be used as a committee room at a parliamentary election (C.I.P.P.A. s. 20), are not prohibited from such use at a local government election (M.E.C.I.P.A. s. 16); and, subject to the paramount right of the returning officer to use schools which receive parliamentary grants, and rooms which are maintained out of local rates, for hearing objections to nomination papers, for taking the poll, and for counting votes (L.G.A. s. 75, sub. 16, *g*; B.A. s. 6), such schools and rooms, when obtainable, may be used as committee rooms at a local government election.

Public elementary schools may be used.

The hiring, or letting, or use, of any of the above prohibited premises, or any part thereof, for a committee room is an illegal hiring (M.E.C.I.P.A. s. 16, sub. 1, *b*); and if the illegal hiring is by, or with the knowledge or consent of, the candidate, the election may be avoided (*ib.* s. 17, sub. 2, and s. 8, sub. 2). The hirer, and the person using, are equally guilty of an illegal hiring, and so also is the person letting, or permitting the use, if he knew it was intended to use the room as a committee room (*ib.* s. 16, sub. 1, *b*).

Hiring of prohibited places.

The number of committee rooms that may be hired for payment is less than in the case of a parliamentary election. At a local government election there may be hired for payment one committee room for the electoral division, and if the number of electors in such division exceeds 2000, one additional committee room for every 2000 electors, and incomplete part of 2000 electors over and above the said 2000 (M.E.C.I.P.A. s. 4, sub. 1, *c*). Thus, in an electoral division of from 2001 to 4000 electors inclusive, two committee rooms may be

Number of committee rooms.

CHAP. VII. hired for payment ; in an electoral division having 4001 to 6000 electors, three committee rooms may be hired for payment, and so on.

Payment therefor.

No payment or contract for payment shall, for the purpose of promoting or procuring the election of a candidate at a local government election, be made on account of any committee room in excess of the number allowed (M.E.C.I.P.A. s. 4, sub. 1, *c*), under penalty of an illegal practice (*ib.* sub. 2), avoiding the election, if such payment or contract has been made by the candidate or his agents (*ib.* s. 8, sub. 2).

Hiring.

All contracts for the hire of committee rooms should be entered into by the candidate or by some clerk or agent by himself thereunto lawfully authorised. Great caution should be exercised that the payment is not excessive, but fair and reasonable, and in no sense "colourable"; and that the room is not resorted to or used for any corrupt, illegal, or improper purpose. For a form of agreement for the hire of a committee room, see No. 1 *post*, p. 229.

By two candidates jointly.

The hire or use of the same committee room by two or more candidates makes them joint candidates for the purposes of calculating the maximum allowances for expenses (M.E.C.I.P.A. s. 5, sub. 4), unless such employment or use be accidental or casual, trivial or unimportant (*ib.* sub. 4, *a*).

Rooms lent gratuitously.

The candidate, while thus limited as to paid committee rooms, is not prohibited from making use of any number of committee rooms that are lent to him gratuitously, provided such rooms are not in any prohibited place (as to which, see *ante*, p. 78).

## CHAPTER VIII.

## CHAP. VIII.

## PRINTING AND ADVERTISING.

<i>Name, &amp;c., of printer, &amp;c., must appear on bills, &amp;c.</i> . . .	81	<i>Control should be kept over the expenditure</i> . . .	84
<i>Payment for exhibiting bills, &amp;c., to advertising agent or non-electors</i> . . .	82	<i>What documents may usefully be printed and advertised</i> . . .	"
<i>"Sandwich men," and bill distributors</i> . . .	83	<i>Return of undelivered circulars, &amp;c.</i> . . .	85
<i>What is an "address, bill, or notice," and a "bill, placard, or poster" . . .</i>	"	<i>Gratuitous circulation of newspapers</i> . . .	"
		<i>And of general political literature</i> . . .	"

The M.E.C.I.P.A. is applied to local government elections by L.G.A. s. 75.

Every bill, placard, or poster, having reference to a local government election shall bear upon the face thereof the name and address of the printer and publisher thereof; and any person printing, publishing, or posting, or causing to be printed, published, or posted, any such bill, placard, or poster without such name and address, shall, if he is a candidate, be guilty of an illegal practice, and if he is not the candidate, shall be liable to a fine of £100 (M.E.C.I.P.A. s. 14). This provision is mainly intended as a check upon anonymous, scurrilous, and untrue placards; but, though such is its intention, it is not limited in any way, but extends to all bills, etc., having reference to the election; and if, therefore, the candidate causes any such bill, placard, or poster, to be printed, published, or posted which does not bear upon its face the name and address of the printer and publisher, the election may be avoided (*ib.* s. 3 sub. 2), unless the candidate gets relief (see *post*, p. 202). Except on the application of a candidate, no relief in respect of this

CHAP. VIII. offence can be granted, as in the case of other persons the offence is neither an illegal practice, nor an illegal payment, employment, or hiring, and therefore does not fall within M.E.C.I.P.A. s. 20. A printer, therefore who omits to print his name, etc., on any poster, etc., having reference to an election, is liable to the above fine of £100; he may appeal against his conviction (M.E.C.I.P.A. s. 30; C.I.P.P.A. s. 54 sub. 2), but is without any remedy under M.E.C.I.P.A. s. 20; and so far as relief was granted to a printer in *ex parte Clark*, 52 L. T. 260, the decision must be considered as *coram non judice*. It will be observed also that the provision applies to any poster, etc., "having reference to an election," and that consequently any such poster, etc., printed, etc., months, or even years, before or after the election, may be held to fall within the provision; though, on the other hand, it is not clear whether "election" is not to be construed, as elsewhere in the Act, as referring to a then impending or current election, and not to one not imminent, or past and gone. As to what is evidence of "printing or causing to be printed," see *Bettesworth v. Allingham*, 16 Q. B. D. 44.

Payment for exhibiting bills, &c., to advertising agent or non-electors.

Bills, placards, and posters may be exhibited and posted in the usual places in the constituency, or upon or in any shop, window, wall, or place which the owner consents to be so used. But payment must not be made to, nor must any contract for payment be entered into with, an elector on account of the use of any house, land, building, or premises for the exhibition of any address, bill, or notice, or on account of the exhibition of any address, bill, or notice, unless such elector be an advertising agent, and the payment to, or contract with him, be made in his ordinary course of business (M.E.C.I.P.A. s. 4, subs. 1, 3). Any payment or contract for payment made, either out of the ordinary course of business, or with an elector who is not an advertising agent, for exhibiting bills, etc., whether on his own or any other person's house, hoarding, or premises, or by himself or his servants, is an illegal practice (*ib.* sub. 2); and if an agent of the candidate is guilty of such illegal

practice the election may be avoided (*ib.* s. 8, sub. 2). CHAP. VIII.  
Shopkeepers being electors, cannot therefore be paid  
for the exhibition of bills or notices. Non-electors may  
be paid for exhibiting bills, etc., but such payments  
must not be "colourable," or excessive, or made with  
the intention of influencing the votes of electors, in any  
of which cases it would probably be bribery (see *West-*  
*minster*, 1 O'M. & H. 90).

The hiring of "sandwich-men" and bill distributors "Sandwich-  
men," and bill  
distributors. ]  
for the exhibition and distribution of addresses, bills or  
notices, is legal (see per Field, J., in *Stepney*, 4 O'M. &  
H. 54); but advantage must not be taken of this  
permission to employ for these purposes additional paid  
clerks or messengers beyond the authorised number, or  
the candidate may find that he has committed an illegal  
practice (M.E.C.I.P.A. s. 13, sub. 1; s. 17, sub. 2).  
The proper course appears to be to entrust these duties  
to an advertising agent or contractor, or master bill  
distributor. It would seem also that, so far as regards  
the "advertising," though not apparently so far as  
regards the "distributing," addresses and notices, the  
persons so employed, if electors, must pursue this calling  
as their regular, not occasional, means of livelihood, and  
the contracts with them must be made in the ordinary  
course of business (*ib.* s. 4, sub. 3).

It will be observed that there is a difference in the What is an  
phrasology of the above provisions. In the earlier "address,  
bill, or  
section of the Act (M.E.C.I.P.A. s. 4, sub. 1, *b*) the notice," and  
words are "address, bill, or notice"; while in the later a "bill,  
placard, or  
section dealing with this subject (s. 14), the words are poster."  
"bill, placard, or poster." The word "bill" appears to  
be the largest word in either of these phrases; the words  
"placard or poster" refer rather to a particular kind of  
"bill," viz., one capable of being placarded or posted;  
and it seems probable that the legislature intended the  
phrase "address, bill, or notice" to include "bill, placard,  
or poster" (see *Barrow-in-Furness*, 4 O'M. & H. 76).  
Accordingly, it has been held that a document being a  
copy of a letter from a leading statesman, and another  
document giving reasons why a particular class of voters



CHAP. VIII. — might vote for a particular candidate, might be lawfully printed, advertised, and distributed, as they fell within the words "address, bill, or notice," although it was urged that these documents were not "addresses or notices" because they were not *addressed* in terms to any person, and did not *notify* that anything was to happen, or be done (*Barrow-in-Furness*, 4 O'M. & H. 77). On the other hand it has been held that an election handbill urging electors to vote for a particular candidate, and a voter's polling card containing a copy of the ballot paper, and instructions as to marking same, are not "addresses or notices" (*Stepney*, per Denman, J. 4 O'M. & H. 52; *contra*, Field, J., *ib.* 54). A printed letter inviting voters to vote for a particular candidate, left at a voter's residence, and a similar bill posted about the constituency, have been held by justices to be "bills, placards, or posters," but this decision was not confirmed by the court (*Bettesworth v. Allingham*, 16 Q. B. D. 44, 2 T. L. R. 67), and so far as regards the printed letter is, it is submitted, erroneous. A document whose description is doubtful, can often be made an "address" or a "notice," by prefacing it with a few words of address or notification.

Control should be kept over the expenditure.

Before any expenses for printing or advertising have been incurred, the candidate should form an estimate of the amount necessary, and, throughout the election, he should be careful that this amount is not exceeded, as there is often great difficulty in controlling expenditure under this head, and if there is any laxity, the maximum allowance for election expenses may easily be exceeded.

What documents may usefully be printed and advertised.

The address of the candidate should be most extensively advertised and circulated. It should be sent to every elector, advertised in every local paper (at an agreed price), and posted on all usual places throughout the constituency. Shop-keepers and inn-keepers should also be requested to exhibit it gratuitously in their windows. Notice of election meetings should similarly be advertised, circulated, and posted; and so also should all other notices of importance or interest to the candidate or electors.

Arrangements can be made with the Post Office to return all undelivered circulars, addresses, etc., direct to the candidate, or to some specified committee room, and in this manner changes of address, not previously discovered, may be ascertained.

CHAP. VIII.

Return of undelivered circulars, &c.

The gratuitous and *bonâ fide* circulation of waste copies of a newspaper, free of expense to the candidate, has been held to be, though suspicious, not an illegal practice ; but, at the same time, one of the judges (Cave, J.) advised candidates to take advice before resorting to such a practice in future (*Norwich*, 27 March, 1886 : *Print. Min.* pp. 67, 78). A newspaper, started to favour the views of a particular candidate or party, which is not distributed gratuitously, but sold in ordinary course, and which is dropped soon after the election is over, has been held not to be an election expense (*Kennington*, 4 O'M. & H. 94).

Gratuitous circulation of newspapers.

There appears to be nothing illegal or improper in a political club, society, association, or a private individual, distributing general political literature at an election, provided such literature deals with the views of a political party generally, and is not directed to the promotion of the election of any particular candidate. But the candidate and his agents must not aid in such distribution, nor should they accept the gift of any such literature, however general it may be ; they should take care not to adopt the distribution, and should also take such steps as may seem desirable to prevent the club, etc., or private individual, from becoming an agent for whose acts the candidate may be rendered responsible. If the literature is not general, but deals with the election of a particular candidate, it is an election expense, and must be returned by the candidate, no matter by whom the expense was incurred, or the distribution effected.

And of general political literature.

## ELECTION MEETINGS.

---

<i>Places prohibited from use for</i>		<i>Letting creates no disqualification</i>	
<i>meetings</i>	86	<i>of elector</i>	87
<i>What is an election meeting</i>	„	<i>Bands of music, flags, cockades,</i>	
		<i>&amp;c.</i>	„

---

\* The M.E.C.I.P.A. is applied to local government elections by L.G.A. s. 75.

Places prohibited from use for meetings.

All places prohibited from use as committee rooms (as to which see *ante*, p. 78) are equally prohibited from use for holding meetings for the purpose of promoting or procuring the election of a candidate at a local government election (M.E.C.I.P.A. s. 16, sub. 1), whether such meetings be public or private. There is no such prohibition in parliamentary elections, and this thus constitutes a material restriction on the ability to hold meetings in support of a county councillor's election.

What is an election meeting

But the meeting must be a meeting held "for the purpose of promoting or procuring the election of a candidate" (M.E.C.I.P.A. s. 16, sub. 1). A meeting held to present a requisition to a person to stand for election, and to induce him to become a candidate, is not an election meeting; for a meeting held to select a candidate is not a meeting to procure his election, and there is a great distinction between getting a candidate and promoting his election after you have got him (*Norwich*, 4 O.M. & H. 85, 86). If the primary, and direct, and real object is to get a candidate, then the meeting is not an election meeting, although it indirectly promotes the interest of the party; but if the nominal object is to get a candidate, while the real object is to promote the

election of a particular candidate, then the meeting is an election meeting (see *ib.*). CHAP. IX.

There is nothing to prevent an elector from letting any room or place for holding any election meeting, not being in a prohibited place, nor does he thereby disqualify himself from voting. Letting  
creates no  
disqualifica-  
tion of elector.

No payment or contract for payment shall, for the purpose of promoting or procuring the election of a candidate at a local government election, be made on account of bands of music, torches, flags, banners, cockades, ribbons, or other marks of distinction (M.E.C.I.P.A. s. 12, sub. 1), under penalty of an illegal payment (*ib.* sub. 2), and of an illegal practice, if the offence be committed by the candidate, or with his knowledge and consent (*ib.* s. 17, sub. 2). The giving or providing of cockades, ribbons, or other marks of distinction is not illegal *per se*, as it is in a parliamentary election (see 17 & 18 Vict. c. 102, s. 7), and the giving or providing of bands of music, torches, flags, or banners is also not illegal, if in either case no payment (pecuniary reward, valuable security or consideration, C.I.P.P.A. s. 64; M.E.C.I.P.A. s. 34), or contract for payment, be made. Bands of  
music, flags,  
cockades, &c.

## [THE NOTICE OF ELECTION.]

<i>When and by whom given</i> . . . . .	88	<i>Publication</i> . . . . .	91
<i>Form and contents</i> . . . . .	„	<i>Misnomer, inaccurate description, or error in notice</i> . . . . .	„
<i>Day of election</i> . . . . .	89	<i>Failure to hold election</i> . . . . .	„
<i>Friday an unsuitable day</i> . . . . .	„	<i>Power to hold it next day</i> . . . . .	„
<i>Saturday also an unsuitable day</i> . . . . .	90	<i>Application to High Court</i> . . . . .	„
<i>Ordinary day of election</i> . . . . .	„	<i>Application to Local Government Board</i> . . . . .	92
<i>Signature</i> . . . . .	„		

THE M.C.A. and M.E.C.I.P.A. are applied to local government elections by L.G.A. s. 75.

When and by  
whom given.

Nine days at least before the day for the election of a county councillor, the returning officer or his deputy shall prepare, sign, and publish a notice thereof (M.C.A. s. 54; L.G.A. s. 75, sub. 5); but where an electoral division is co-extensive with, or wholly comprised in, a borough, the notice shall be prepared, signed, and published by the town clerk (L.G.A. s. 75, sub. 6). "At least" means clear days, and therefore both the day of election and the day of giving the notice must be excluded in calculating these nine days (*R. v. Justices of Shropshire*, 8 A. & E. 173; *R. v. Justices of Middlesex* 3 D. & L. 109). Sundays, etc., are included in computing these nine days, see *post*, p. 111.

Form and  
contents.

The notice of election may comprise matter necessary for several electoral divisions (M.C.A. s. 65), but no form is prescribed, nor is there any direct requirement as to the contents of the notice, except that "there shall be added to every notice of election the notification contained in the second schedule to this Act with respect to claims against returning officers" (38 & 39 Vict. c. 84,

s. 7 ; L.G.A. s. 75, sub. 19). The notice should, however, inform the electors of:—the place at which forms of nomination papers are obtainable (see further hereon *post*, p. 94) ; the last day when, and the place where, nomination papers must be delivered (as to which see *post*, p. 100) ; the day when, and the place where, the returning officer or his deputy will attend to hear and decide objections to nomination papers (as to which see *post*, p. 102) ; and obviously it must state the day of election. With these materials the town clerk, or returning officer, or his deputy (as the case may be), can frame the notice of election, and he may well take as his guide the form of notice applicable to municipal elections (M.C.A. sch. VIII., part II. form H) except that, as no form of nomination paper is prescribed by the L.G.A., it does not seem desirable that he should prescribe any such form. For a form of notice framed on these principles, see No. 10, *post*, p. 242. The notice may be in writing or print, or partly in writing and partly in print, and “print” includes any mechanical mode of reproduction (L.G.A. s. 99).

The first step, therefore, is to fix the day of election, and the returning officer or his deputy, or town clerk (as the case may be), can then calculate the other dependent dates. Now, the day of election at the first election of county councillors may be any day in January, 1889, not earlier than the 14th of January, that the returning officer for the county may fix (L.G.A. s. 103, sub. 1). The statute does not expressly except Sundays ; but, though an election held on a Sunday is good at common law, the language of M.C.A. s. 230, sub. 2, and of B.A. r. 56, both incorporated into the L.G.A., support the view that nothing required by these Acts to be done, is to be done on a Sunday.

Friday is an unsuitable day to select as the day of election in any county in which there are many Jewish voters, because the Jewish Sabbath begins at sunset on Friday, and as the Jewish religion prohibits writing by Jews on their Sabbath, while it allows of dictation, and as the presiding officer is not authorised to mark their votes for them on a Friday (see B. A. r. 26), Jewish voters

Day of  
election.

Friday an un-  
suitable day.



CHAP. X. — may be precluded from exercising the franchise if the day of election be a Friday.

Saturday also  
an unsuitable  
day.

Saturday is also an unsuitable day to select for the day of election in any such county, because of the additional labour that may be thrown on presiding officers in having to mark the votes of Jewish voters (see B. A. r. 26) ; and because of the loss of time, delay, and inconvenience that may thereby be caused to other voters. It is also an unsuitable day, because, if any candidate's counting agent objects to the counting of the votes taking place during the prohibited hours, the returning officer may be prevented from proceeding with the counting until the following Monday (see B.A. r. 35, and *post*, p. 138).

Ordinary day  
of election.

The day so fixed shall be deemed for the purposes of the first election to be the ordinary day of election of county councillors (L.G.A. s. 103, sub. 1). There shall be a separate election for each electoral division (M.C.A. s. 50, sub. 2), but all the elections are to be held on the same day throughout the whole county. Although the town clerk prepares, signs, and publishes the notice of election in certain electoral divisions as mentioned *ante*, p. 88, he does not fix the day of election ; this is fixed by the county returning officer, and is the same day throughout the whole county.

In future years the elections of county councillors and of councillors of a borough shall be conducted together, (L.G.A. s. 75, sub. 1) ; and the ordinary day of election shall be the 1st of November (M.C.A. s. 52).

Signature.

The notice of election must be signed by the town clerk, returning officer, or deputy returning officer (as the case may be), who prepares it (M.C.A. s. 54 ; L. G. A. s. 75, sub. 5). This signature may be printed (*2nd Sligo*, 1 P. R. & D. 211), or affixed by a stamp (*Bennet v. Brumfitt*, L. R. 3 C. P. 28 ; *Osgood v. Nelson*, 41 L. J. Q. B. 337 ; *Blades v. Lawrence*, L. R. 9 Q. B., 374). It is not necessary that every copy of the notice should be actually signed by the hand of the town clerk, returning officer, or deputy, but it would be prudent that the town clerk, returning officer, or deputy, should sign by his own hand the original notice, or the copy sent

to the printer to be printed (*2nd Sligo*, 1 P. R. & D. 211); and, of course, a stamped signature must be affixed only by him or by his authority (*Blades v. Lawrence*, L. R. 9 Q. B. 374).

The town clerk, returning officer, or deputy re- Publication.  
turning officer (as the case may be) shall publish the notice of election by fixing it on the town hall, and in some conspicuous place in the electoral division (M.C.A. s. 54). A notice fixed on the town hall shall be fixed in some conspicuous place on or near the outer door of the town hall (M.C.A. s. 232); if there be no town hall in the electoral division, this publication of the notice cannot, of course, be effected. Every bill, placard, or poster used for effecting this publication must bear upon the face thereof the name and address of the printer and publisher thereof (M.E.C.I.P.A., s. 14). For the reasons stated, *ante*, p. 89, it is better not to give the notice on a Sunday, though, it is submitted, there is no illegality in giving it on that day.

No misnomer, or inaccurate description of any person Misnomer,  
or place named in the notice of election, shall hinder the inaccurate  
full operation of the Act with respect to that person or description, or  
place, provided the description of that person or place error in notice.  
be such as to be commonly understood (*see* M.C.A. s. 241). As to the meaning of "commonly understood" see *R. v. Coward*, 16 Q. B. 819; *R. v. Gregory*, 1 E. & B. 600; *R. v. Spratley*, 6 E. & B. 363; *R. v. Tugwell*, L. R. 3 Q. B. 704; *Moorhouse v. Linney*, 15 Q. B. D. 273). But if the notice of election is not given the required number of days before the day of election, the election may be declared void (*Howes v. Turner*, 1 C. P. D. 670; and see *Rye*, 1 P. R. & D. 112; *Seaford*, 3 Lud. 3; *Athlone*, B. & Arn. 122).

If the election is not held on the appointed day or Failure to  
within the appointed time, it may be held on the day hold election.  
next after that day or the expiration of that time Power to hold  
(M.C.A. s. 70, sub. 1). If it is not held on such last- it next day. J  
mentioned day, or becomes void, the High Court may, Application  
on motion, grant a mandamus for the election to be to High  
held on a day appointed by the court (*ib.* sub. 2); and Court.

## CHAP. X.

thereupon public notice shall, by such person as the court directs, be fixed on the town hall (as to which see *ib.* s. 232, and *ante*, p. 91), and shall be kept so fixed for at least six days before the day appointed for the election, and in all other respects the election shall be conducted as directed by the M.C.A. respecting ordinary elections (M.C.A. s. 70, sub. 3). Under the B.A., public notice is given by advertisements, placards, handbills, or such other means as the person appointed to give the notice thinks best calculated to afford information to the electors (B.A. r. 46), and, though this provision is not applied to M.C.A. s. 70, it would be well to observe it where practicable. Every bill, placard, or poster used for this purpose shall bear upon its face the name and address of the printer and publisher thereof (M.E.C.I.P.A. s. 14). There is no provision substituting any other place for the town hall in electoral divisions not being boroughs; and the court should, therefore, in such cases be asked to name some other place. "At least" means clear days (see *ante*, p. 88).

Application to  
Local Govern-  
ment Board.

If from any cause no proper first election takes place, or an election of an insufficient number of persons takes place, or any difficulty arises as respects the holding of the first election of county councillors, the Local Government Board may, by order, do any matter or thing which appears to them necessary for the proper holding of the first election, and may, if it appears to them necessary, direct a new election to be held, and fix the dates requisite for such new election (L.G.A. s. 108, sub. 1). Any such order may modify the provisions of the L.G.A., and the enactments applied by the L.G.A. so far as may appear to the Board necessary for the proper holding of the first election (*ib.*).

## CHAPTER XI.

CHAP. XI.

## THE NOMINATION.

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THE M.C.A. and M.E.C.I.P.A. are applied to local government elections by L.G.A. s. 75.

The nomination at a local government election differs from that at a parliamentary election in that it precedes, Distinction between nomination at

CHAP. XI. instead of being the first step on, the day of election

parliamentary  
and local  
government  
elections.

If there is no contest, the nomination may become the election, but even in that case the result is not announced, and the election does not come into effect, until the day of election arrives. In other respects the procedure at the two elections is very similar, though each is governed by a different set of statutory provisions.

Great care should be taken with regard to the nomination. More municipal elections have probably been invalidated through inattention to the enactments and decisions discussed in this chapter than from all other causes put together.

NOMINATION  
PAPERS.

Providing and  
supplying.

Where an electoral division is co-extensive with, or wholly comprised in, a borough, the town clerk, and in other electoral divisions, the returning officer or his deputy, shall provide nomination papers, and shall supply any elector, with as many nomination papers as may be required, and shall, at the request of any elector, fill up a nomination paper (M.C.A. sch. III. pt. II. r. 6 ; L.G.A. s. 75, subs. 6, 5).

When.

No time is named as from when, or between what hours the town clerk, or returning officer, or deputy returning officer (as the case may be), is to supply nomination papers, and he should therefore be prepared to supply them from the day when the notice of election is given (as to which see *ante*, p. 88), and at all reasonable hours, until the end of the last day for delivery of nomination papers (as to which see *post*, p. 100).

Form and  
contents.

The nomination must be in writing (M.C.A. sch. III. pt. II. r. 1), or partly in writing and partly in print (L. G. A. s. 99). No form of nomination is prescribed, nor is there any direct requirement as to the contents of the nomination paper, except that the nomination shall be conducted in accordance with the rules in M.C.A. sch. III. pt. II. (M.C.A. s. 55). These rules require that the nomination paper must state the surname and other names of the candidate, with his abode and description (*ib.* sch. III. pt. II. r. 5), and that it must be subscribed by two electors of the electoral division as proposer and seconder, and by eight other

electors of the electoral division as assenting to the nomination (*ib.* r. 2). The town clerk, or returning officer, or deputy returning officer, must make provision in whatever form of nomination paper they may adopt, for giving effect to these requirements, and may well take as a guide the form of nomination paper applicable to municipal elections (M.C.A. sch. VIII. pt. II. form I). For a form of nomination paper framed on these principles, see No. 9, *post*, p. 241.

The nomination paper must be fully filled up before it is signed by any one (*Harmon v. Park*, 7 Q. B. D. 369). Filling up.

What is a candidate's surname appears to be a question of fact; in the case of a compound surname it is usual, and seems proper, to insert as the surname all the names forming the compound surname, and to place the first name of the compound surname first. All the Christian names of the candidate should be set out in full, initials only will not suffice (*Mather v. Brown*, 1 C. P. D. 596); but a contraction of a Christian name which is well known, and in ordinary use as representing that name (such as "Wm." for William) is a sufficient statement of such Christian name (see *R. v. Bradley*, 3 E. & E. 634; *Henry v. Armitage*, 12 Q. B. D. 257; *Moorhouse v. Linney*, 15 Q. B. D. 279). Candidate's  
surname and  
other names.

A person's "abode" within the meaning of this statute is his residence; *i.e.* the place where he lives with his family and sleeps at night, and not his place of business, or one of his several places of business (*R. v. Hammond*, 17 Q. B. 772; *Allan v. Greensill*, 4 M. G. & S. 100; and see *Maybury v. Mudie*, 5 M. G. & S. 283). The object of this statute is to give one place of abode (the candidate's residence) by which he can be easily identified, and not to give the electors a choice of one of several places (the candidate's places of business) which they may think fit to select, and at which the candidate may be more or less well known (*R. v. Hammond*, 17 Q. B. at p. 781). But where a person resides during part of the week, month, or year in one place, and during the other part in another place, each would seem to be his Abode.



CHAP. XI. abode within the above rule, for a person can have two residences, although he has his family in one only (*Bond v. Overseers of St. George, Hanover Square*, L. R. 6 C. P. 312; *R. v. Mayor of Exeter*, L. R. 4 Q. B. 110). And see "residence" *ante*, p. 31.

True abode  
should be  
given.

The true place of abode should be given without regard to whether it is so stated in the register (*R. v. Deighton*, 5 Q. B. 896; *R. v. Coward*, 16 Q. B. 819; *R. v. Avery*, 18 Q. B. 576; *Soper v. Mayor of Basingstoke*, 2 C. P. D. 440). The nomination must be conducted in accordance with the rules in sch. III. (M.C.A. s. 55); but an election shall not be invalidated by a non-compliance with those rules if it appears to the court that the election was conducted in accordance with the principles laid down in the body of the Act (M.C.A. s. 72). The rule now under discussion is one of the rules in sch. III., and is a re-enactment of a former statutory provision, often considered by the courts; and, assuming that the decisions thereon are still law, it would seem that, if a wrong place of abode is given, the nomination paper is bad, even though the statement corresponds with that on the register (*R. v. Coward*, 6 Q. B. 819; *R. v. Hammond*, 17 Q. B. 772; *R. v. Deighton*, 5 Q. B. 896); and that if, on the other hand, the true place of abode is given, though with some inaccuracy, but not so as to mislead any one, the nomination paper is good (*R. v. Spratley*, 6 E. & B. 363; *R. v. Gregory*, 1 E. & B. 600; *Soper v. Mayor of Basingstoke*, 2 C. P. D. 440).

There are decisions under other statutes in which it has been held that abode does not necessarily mean the place where a person sleeps, and that his place of business is a sufficient description of his abode (*Haslope v. Thorne*, 1 M. & S. 103; and see *Ablett v. Basham*, 5 E. & B. 1019; *Blackwell v. England*, 8 E. & B. 541; *Hewer v. Cox*, 3 L. T. 508); that a man may have two places of abode, one where he abides at night, and another where he abides by day (*Mason v. Bibby*, 2 H. & C. 883); and that a person may fairly be said to reside where he is daily to be found (*ex parte Brewell, re Bowie*, 43 L. T. 580). But these statutes are not *in*

*pari materiâ* with the M.C.A., and are not, it is submitted, CHAP. XI.  
authorities against the view above stated.

“Description” is the act of delineating or expressing Description.  
a person by perceptible qualities (Johnson’s Dict.); a setting forth of the nature or condition of a person (see Phillip’s Dict.). Where used, as here, in conjunction with “name” and “abode,” it means something different from name or place of abode, viz., the profession, trade, or occupation, if the candidate has any, or his style if he has no occupation (per Field, Q.C. in *R. v. Tugwell*, L. R. 3 Q. B. at p. 712; and per Patteson, J., in *R. v. Coward*, 16 Q. B. 826). If there be a total omission of a candidate’s description, the nomination paper is bad (*R. v. Tugwell*, L. R. 3 Q. B. 712).

“Subscribe” is to give consent to something written, Subscription.  
by signing one’s name underneath. A person shall be entitled to subscribe a nomination paper if he is enrolled in the burgess roll, or register of county electors, for the electoral division (as the case may be), and not otherwise (M.C.A. s. 51, sub. 1); he must be enrolled in the particular division for which he nominates (*R. v. Parkinson*, L. R. 3 Q. B. 11). No person shall subscribe a nomination paper in or for more than one electoral division (M.C.A. s. 51, sub. 2); and no one shall subscribe a nomination paper who is prohibited by law from so doing (*ib.* sub. 3). The same electors may subscribe as many nomination papers as there are vacancies to be filled, but no more (*ib.* sch. III. pt. II. r. 3); but where in the case of a single candidate, and of a single vacancy (*Line v. Warren*, 14 Q. B. D. 76), a person subscribes more nomination papers than one, his subscription shall be inoperative in all but the one first delivered (M.C.A. sch. III. part II. r. 10). Where a nomination paper is subscribed by more than eight assenters, the subscriptions subsequent to the first eight are perhaps nullities.

The subscribing electors must be enrolled in the burgess roll, or register of county electors, which will Subscribers must be enrolled.  
be in force on the day of election (M.C.A. sch. III. part II. r. 18; and see *Budge v. Andrews*, 3 C. P. D.

CHAP. XI. 510); and they must not only be enrolled in that roll or register, but must be clearly qualified and entitled to be thereon (see M.C.A. s. 51, sub. 3). A candidate's whole election may thus be defeated if he be proposed or seconded, or his nomination be assented to, by an unqualified elector, and to guard against any danger in this respect it is prudent to nominate a candidate more than once; there is nothing to prevent different sets of electors nominating the same candidate in separate nomination papers, and a bad nomination cannot avoid a good nomination of the same person (*Northcote v. Pulsford*, L. R. 10 C. P. 476).

Ordinary signatures are sufficient.

The subscriptions of the proposer, seconder and assenters need not be written in full, but may be their ordinary signatures (*Gothard v. Clarke*, 5 C. P. D. 262; and see the heading "signature" in the form of nomination, M.C.A. sch. VIII. part II. form I.); but such signatures must be affixed personally, and not by agent or per procuration (see *Toms v. Cuming*, 7 M. & G. 88; 1 Lutw. 200). The initials only of a Christian name are sufficient (*R. v. Mayor, etc., of Hartlepool*, 2 L. M. & P. 666; *R. v. Avery*, 18 Q. B. 576; *Bowden v. Besley*, 21 Q. B. D. 309).

Should agree with names on roll or register.

The subscriptions should agree with the electors' names as entered on the roll or register; thus, if an elector whose real name is Charles Arthur Burman be entered on the register as Charles Burman, and he subscribe as Charles Arthur Burman, the nomination paper is apparently bad, and may certainly be rejected by the returning officer (*Moorhouse v. Linney*, 15 Q. B. D. 273; but see *Bowden v. Besley*, 21 Q. B. D. 309). The proposer should subscribe first, after him the seconder, and lastly the eight assenters; the nomination must precede the assent, and the subscriptions of the assenting electors must not precede those of the proposer and seconder, or the proper filling in of the candidate's name, etc. (*Harmon v. Park*, 7 Q. B. D. 369). A different proposer or seconder cannot be substituted without the further assent of the eight assenters (*ib.*).

Order of subscription.

Numbers on roll or register.

The numbers on the burgess roll, or register of county electors (as the case may be), of the proposer, seconder

and assenting electors, if given in the nomination paper, must be the correct numbers (*Gothard v. Clarke*, 5 C. P. D. 262); and if the electoral divisions have a distinct numbering, and the general roll or register has not been numbered consecutively without reference to the electoral divisions or polling districts, the name or description of the electoral division or polling district should be given in addition to the number (*Gothard v. Clarke*, 5 C. P. D. 253; *Henry v. Armitage*, 31 W. R. 244).

The prohibition against subscription for more than one electoral division (M.C.A. s. 51, sub. 2) prevents an elector who is registered in several electoral divisions in the same county from nominating for more than one division. He must make his selection, and by the nomination he first subscribes he makes that selection, and he cannot afterwards nominate in any other division; if he in fact subscribes nomination papers in two or more electoral divisions, the nomination paper first subscribed by him is alone valid (see *R. v. Tugwell*, L. R. 3 Q. B. 704; *R. v. Harrald*, L. R. 8 Q. B. 418; *Stepney*, 4 O'M. & H. 43).

An elector can only subscribe for one electoral division.

The prohibition against subscription by persons prohibited by law (M.C.A. s. 51, sub. 3) prevents any person subscribing who is disqualified from voting. A person who cannot vote cannot nominate, for nomination is the voice or vote of the electors, and becomes the election if no other candidate is nominated (see *R. v. Parkinson*, L.R. 3 Q.B. 11). As to who are prohibited from voting, see *ante*, p. 11.

Persons prohibited by law cannot subscribe.

If an elector subscribe more nomination papers than there are vacancies to be filled, the paper or papers in excess of the required number last subscribed and delivered to the returning officer is or are alone invalid; they do not vitiate the valid nomination papers previously subscribed by the same elector, and previously delivered to the returning officer (*Burgoyne v. Collins*, 8 Q. B. D. 450). It is at present undecided whether, if an elector subscribe an excessive number of nomination papers, and those last subscribed be delivered to the returning

Subscribing in excess of vacancies.

## CHAP. XI.

officer before that first subscribed, the latter or the former are to be preferred. It is, however, submitted that the nomination paper last subscribed in excess of the required number is in all cases bad, unless it appear that the subscription and assent to one of the other papers previously subscribed was expressly withdrawn, by notice to the holder of the paper, before such last subscribed paper was delivered to the returning officer ; and that, until the subscription has been acted upon by delivery of the nomination paper to the returning officer, the elector has a right to withdraw his subscription and assent so as to enable him to subscribe and assent to some other nomination.

Separate  
nominations  
essential.

DELIVERY OF  
NOMINATION  
PAPER.

By whom and  
where.

Each candidate must be nominated by a separate nomination paper (M.C.A. sch. III. part II. r. 3).

Every nomination paper must be delivered by the candidate, or his proposer or seconder, at the town clerk's office where the electoral division is co-extensive with, or wholly comprised in a borough (M.C.A. sch. III. part II. r. 7 ; L.G.A. s. 75, sub. 6), and elsewhere at the place fixed by the returning officer, which place shall, if the electoral division is the whole or part of an urban district, be in that district, and in any other case shall be in the electoral division or in an adjoining electoral division (L.G.A. s. 75, sub. 7). It must not be delivered by an agent (*Monks v. Jackson*, 1 C.P.D. 683), and cannot therefore be transmitted by post.

Within what  
time.

The nomination paper must be delivered as aforesaid, seven days at least before the day of election, and before 5 P.M. of the last day for delivery of nomination papers (M.C.A. sch. III. part II. r. 7). "At least" means clear days (see *ante*, p. 88). As to the computation of these seven days, see *post*, p. 110. The hour, 5 P.M., is to be determined by Greenwich mean time (43 & 44 Vict. c. 9, s. 1), not by local time. There is no power to accept a nomination paper which is delivered after the time limited (see *Howes v. Turner*, 1 C. P. D. 680).

Written  
consent of  
absent  
candidate.

The nomination of a person absent from the United Kingdom shall be void unless his written consent, given



within one month before the day of his nomination in the presence of two witnesses, is produced at the time of his nomination (M.C.A. sch. III. part II. r. 16). The consent should be dated, and its date will probably be accepted as good *prima facie* evidence of the consent having been given within the one month. "Month" means calendar month (13 & 14 Vict. c. 21. s. 4). The production of this consent should be by the candidate's proposer or seconder, as they are the only persons who are competent to deliver the nomination paper (M.C.A. sch. III. part II. r. 7, and see *ante*, p. 100) to the town clerk or returning officer, or deputy returning officer who receives the nomination. For a form of consent, see No. 4, *post*, p. 232.

Where the electoral division is co-extensive with, or wholly comprised in a borough, the town clerk, and in other electoral divisions the returning officer or deputy returning officer, shall forthwith send notice of every such nomination to each candidate (M.C.A. sch. III. part II. r. 8; L.G.A. s. 75, subs. 5, 6); for a form of this notice, see No. 14, *post*, p. 245. As these notices are not required to be served or delivered, it is presumed that they may be sent by post; but, if that method of sending them be adopted, it would be prudent to send them by registered letter. "Forthwith" does not mean immediately (*Roberts v. Brett*, 34 L.J.C.P. 241), but within a reasonable time (*R. v. Price*, 8 Moore, 203; *R. v. Justices of Worcester*, 7 Dowl. 789; *Costar v. Hetherington*, 1 E. & E. 802), after 5 P.M. on the last day for delivery of nomination papers.

Each candidate may, by writing signed by him, or, if he is absent from the United Kingdom, then his proposer or seconder may, by writing signed by him, appoint a person to attend the proceedings before the returning officer or his deputy, on behalf of the candidate (M.C.A. sch. III. part II. r. 11; L.G.A. s. 75, sub. 4). This document may be partly in writing, and partly in print (L.G.A. s. 99); for a form, see No. 3, *post*, p. 231. No witness to the signature is required. The person to be appointed is usually a solicitor, as legal arguments often

CANDIDATE'S  
REPRESENTA-  
TIVE.

—  
Appointment  
of.



CHAP. XI. arise on the proceedings before the returning officer. As to employing him for payment, see *ante*, pp. 48, 51, 52.

Delivery of appointment.

When the electoral division is co-extensive with, or wholly comprised in a borough, this appointment must be delivered to the town clerk, and, in other electoral divisions, to the returning officer or his deputy, before 5 P.M. of the last day for delivery of nomination papers (M.C.A. sch. III. pt. II. r. 11; L.G.A. s. 75, subs. 5, 6). As to what is the last day for delivery of nomination papers, see *ante*, p. 100.

OBJECTIONS TO NOMINATION.

Who may object, and when.

Each candidate and his representative may, during the time appointed for the attendance of the returning officer, or his deputy, for the purpose of deciding on objections, object to the nomination paper of any other candidate for the electoral division (M.C.A. sch. III. part II. r. 13; L.G.A. s. 75, sub. 4). Every objection must be in writing (M.C.A. sch. III. part II. r. 9); or partly in writing and partly in print (L.G.A. s. 99); for a form, see No. 15, *post*, p. 245. As to what is the time appointed for the attendance of the returning officer, or his deputy, see *passim*, and as to what is the nature of the objections which can and ought to be decided upon by the returning officer or his deputy, see *post*, p. 103. The only persons entitled to raise any objection are, it will be observed, "each candidate and his representative."

ADJUDICATION ON OBJECTIONS.

The returning officer, or his deputy, shall attend at the place named in the notice of election on the day next after the last day for delivery of nomination papers for a sufficient time, between 2 P.M. and 4 P.M., and shall decide on the validity of every objection made in writing to a nomination paper (M.C.A. sch. III. part II. r. 9; L.G.A. s. 75, subs. 4, 7). The sufficient time cannot be less than the whole of the interval between 2 and 4 P.M., inasmuch as objections may be adduced from the first until the last moment of that interval.

Place for hearing objections.

The place at which the returning officer or his deputy attends to hear and decide objections to nomination papers may be any room in a school receiving a grant out of moneys provided by parliament, or any room the expense of maintaining which is payable out of any

local rate (B.A. s. 6; L.G.A. s. 75, sub. 16, *g*); or, in a borough, the town hall (L.G.A. s. 75, sub. 7). But, except in a borough, such place shall, if the electoral division is the whole or part of an urban district, be in that district, and in any other case shall be in the electoral division, or in an adjoining electoral division (L.G.A. s. 75, sub. 7). No election can be held in any church, chapel, or other place of public worship (M.C.A. s. 69); but a school-room in which meetings for public worship are occasionally held does not appear to fall within this prohibition, and there is no enactment rendering an election void for a disregard of this prohibition.

CHAP. XI.

The returning officer or his deputy "shall decide on the validity of every objection made in writing to a nomination paper" (M.C.A. sch. III. part II. r. 9); but, notwithstanding the largeness of these words, he is not empowered to deal with every kind of objection that may be raised to a nomination (*per* Lords Watson and Herschell in *Pritchard v. Mayor, etc., of Bangor*, 13 App. Cas. at pp. 251, 257). He is to dispose of formal objections arising on the face of the nomination paper, but not of an objection which attacks the qualification of the candidate (*ib.*). He can entertain an objection that the nomination paper has been delivered by an agent, instead of by the candidate or his proposer or seconder, and therefore not by the proper hands (*Monks v. Jackson*, 1 C.P.D. 683); and that an erroneous number on the register has been given in the nomination paper (*Gothard v. Clark*, 5 C. P. D. 253); but he has no power to deal with an objection as to the *time* of the delivery of the nomination paper (*Howes v. Turner, ib.* 670); nor, *semble*, as to which nomination is good where the same assenter has subscribed more nominations than there are vacancies to be filled (*Burgeyne v. Collins*, 8 Q. B. D. 450). It is also to be observed that the returning officer is not empowered, as is a returning officer at a parliamentary election, himself to take any objection to a nomination paper (*cf.* B.A. r. 6). If no objection is made in writing by a person entitled to object, viz., an opposing candi-

Jurisdiction of  
the returning  
officer.

CHAP. XI. — date or his representative (M.C.A. sch. III. part II. r. 13), the nomination becomes a valid nomination (*per* Lord Watson in *Pritchard v. Mayor, etc., of Bangor*, 13 App. Cas. 252). If an objection is raised, which the returning officer has no jurisdiction to decide, he should decline to entertain it, or thus to affect to exercise a jurisdiction which he does not possess.

Frivolous  
objections.

With respect to matters clearly within the jurisdiction of the returning officer, it should be remembered that the making and allowance of frivolous objections may lead to the expense of an election petition, and to all the turmoil and expense of another election (as in *Mayo*, 2 O'M. & H. 191); also, that the returning officer is often disposed (as in *Monks v. Jackson*, 1 C. P. D. 683) to allow rather than disallow an objection, inasmuch as the former decision is subject to review by a court of law, whereas the latter decision, if made with jurisdiction, is final and without appeal (see M.C.A. sch. III. part II. r. 14). On the other hand, as the allowance of an objection precludes the candidate from going to the poll, a returning officer is sometimes advised to disallow the objection, and thus to leave the electors to express their choice between the candidates; in which case, if the candidate whose nomination paper has been objected to is placed at the bottom of the poll, the further prosecution of the objection becomes immaterial. The proper course is for the returning officer, without regard to consequences, to decide all objections that he has jurisdiction to decide.

Reception of  
evidence,  
amendment  
and adjourn-  
ment.

The returning officer or his deputy is not bound to receive evidence or to enter upon a long or complicated inquiry (*Gothard v. Clarke*, 5 C. P. D. 260, 264; *Moorhouse v. Linney*, 15 Q. B. D. 279); though he is probably entitled, if he please, to hear any evidence then tendered, provided he does not delay the proceedings. The question of whether he can allow a mere clerical error, appearing *ex facie*, to be corrected, has been raised, but not decided (*Gothard v. Clarke*, 5 C. P. D. 261). It is very doubtful whether he can adjourn the proceedings to seek advice or to take time to consider his decision (*Pritchard v. Mayor, etc., of Bangor*, 13 App. Cas. 250).

The decision of the returning officer or his deputy on any question which he has jurisdiction to determine shall be given in writing, and shall, if disallowing an objection, be final ; but, if allowing an objection, shall be subject to reversal on petition questioning the election or return (M.C.A. sch. III. part II. r. 14). The decision is usually indorsed on the back of the objection.

CHAP. XI.  
—  
Decision of  
the returning  
officer.

It is the duty of the returning officer and of his deputy to inquire whether nominations, which might apply to one or to different persons, are of the same or different persons, in order that he may know how properly to set them out in the ballot papers (*Northcote v. Pulsford*, L.R. 10 C.P. 484).

Where the number of valid nominations exceeds that of the vacancies, any candidate may withdraw from his candidature by notice signed by him and delivered at the town clerk's office in a borough, and elsewhere at the place fixed by the returning officer, not later than 2 P.M. of the day next after the last day for delivery of nomination papers : provided that such notices shall take effect in the order in which they are delivered, and that no such notice shall have effect so as to reduce the number of candidates ultimately standing nominated below the number of vacancies (M.C.A. sch. III. pt. II. r. 17 ; L.G.A. s. 75, sub. 7). The notice cannot be verbal, as it has to be signed ; it may be in print, or partly in print and partly in writing (see L.G.A. s. 99) ; for a form, see No. 12, *post*, p. 244. It need not be addressed to any one. It must be delivered (not sent) by the time above specified, or it is too late ; but it cannot take effect until 4 P.M., as and until that hour it cannot be known what is the number of candidates validly nominated ; and is then subject to the priority of any previously delivered notice.

WITH-  
DRAWAL OF  
CANDIDATE.  
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If the number of valid nominations exceeds that of the vacancies, the councillors shall be elected from among the persons nominated (M.C.A. s. 56, sub. 1).

NUMBER OF  
NOMINA-  
TIONS.  
—

If the number of valid nominations is the same as that of the vacancies, the persons nominated shall be deemed to be elected (M.C.A. s. 56, sub. 2). The word

In excess of  
vacancies.  
Equal in  
number to  
vacancies.

CHAP. XI. "valid" here refers to nominations which are held, or are deemed to be, valid on the proceedings before the returning officer or his deputy; and therefore, if the nomination of a person who is legally disqualified is regular in form, and fulfils all requisite conditions, it is a good nomination notwithstanding that the person is disqualified and notwithstanding that his election is open to question by means of an election petition (*per* Lord Herschell in *Pritchard v. Mayor, etc., of Bangor*, 13 App. Cas. 257).

Less in number than vacancies. If the number of valid nominations is less than that of the vacancies, the persons nominated shall be deemed to be elected, and such of the retiring councillors for the electoral division as were highest on the poll at their election, or, if the poll was equal, or there was no poll, as are selected for that purpose by the returning officer or his deputy, shall be deemed to be re-elected to make up the required number (M.C.A. s. 56, sub. 3; L.G.A. s. 75, subs. 3, 4).

No valid nomination. If there is no valid nomination, the retiring councillors shall be deemed to be re-elected (M.C.A. s. 56, sub. 4; and see *R. v. Mayor of Welchpool*, 35 L. T. 595).

FORGED, ETC., NOMINATION. If any person forges, or fraudently defaces or destroys any nomination paper, or delivers to the returning officer or his deputy, or to the town clerk, any forged nomination paper, knowing it to be forged, he shall be guilty of a misdemeanour, and shall be liable to imprisonment for any term not exceeding six months, with or without hard labour (M.C.A. s. 74, sub. 1; L.G.A. s. 75, subs. 4, 6). An attempt to commit any such offence shall be punishable as the offence is punishable (M.C.A. s. 74, sub. 2).

DEATH OF CANDIDATE. There is no provision for the case of the death of the candidate at or after nomination and before election. After election, although there is no express provision to that effect, the death of a councillor creates a casual vacancy in respect whereof notice can be given and a fresh election held under M.C.A. s. 66 (and see further, *post*, p. 196); as the office is then no longer full, the council is incomplete, and the councillor no longer exists.



Where the electoral division is co-extensive with or wholly comprised in a borough, the town clerk, and, in other electoral divisions, the returning officer or his deputy, shall, before the day of election, cause the surnames and other names of all persons validly nominated, with their respective abodes and descriptions, and the names of the persons subscribing their nomination papers as proposers and seconders, to be printed and fixed in some conspicuous place on or near to the outer door of the town hall in a borough, and elsewhere on or near to the outer door of the place fixed by the returning officer, and also, in either case, in some conspicuous place in the electoral division (M.C.A. sch. III. part II. r. 15; s. 232; L.G.A. s. 75, subs. 5, 6, 7). The bills, placards, or posters by which this publication is made must bear upon the faces thereof the name and address of the printer and publisher thereof (M.E.C.I.P.A. s. 14); for a form, see No. 11, *post*, p. 243. The period between the day on which this publication is made and the election, may be such period, not exceeding six days, as the returning officer may fix (L.G.A. s. 75, sub. 9; s. 100). The L.G.A. does not say whether this "period" is a period of days, or of hours; but, as it must not exceed "six *days*," it evidently means a period of days. As the period is an intervening period, neither the day of publication nor the day of election can be reckoned, and thus one clear day is the minimum period that may intervene between the two above-mentioned events, and the last day on which this publication may be made is two days before the day of election instead of "at least four days" as in the case of a municipal election. The maximum period that may intervene is "not exceeding six days," and the earliest day on which this publication can be made is therefore the evening of the day on which the returning officer attends to hear and decide objections to nomination papers, which is six days at least before the day of election, and which again gives an intervening period of "not exceeding six days."

If an election of councillors is not contested, the returning officer or his deputy shall publish a list of the List of persons elected.



CHAP. XI. — persons elected not later than 11 A.M. on the day of election (M.C.A. s. 57; L.G.A. s. 75, sub. 4). This publication should be effected in the same manner as the notice of election (as to which see *ante*, p. 91). For a form, see No. 8, *post*, p. 241.

Return to  
clerk of the  
county  
council.

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The returning officer shall forthwith after the election, return the names of the persons elected to the clerk of the county council (L.G.A. s. 75, sub. 8); and after the first election shall send such names to the clerk of the peace who will by virtue of the Act become the clerk of the county council (*ib.* s. 103, sub. 5) that is, the clerk of the peace of the county (*ib.* s. 83, sub. 1, and see s. 118, sub. 1). This return should be in the handwriting of, or signed by, the returning officer (see *Londonderry*, P. & K. 272; *Limerick*, *ib.* 373); for a form, see No. 16, *post*, p. 245. Where a borough returning officer acts in pursuance of a writ directed to him from the county returning officer, the former returns the names of the persons elected to the county returning officer (L.G.A. s. 75, sub. 6), and the latter returns the names to the clerk of the county council.

Election for  
more than  
one division.

If at the first election a person is elected a county councillor for more than one electoral division of a county, his choice as to the division for which he will serve shall be made by writing addressed to the returning officer, and if not so made, the returning officer shall, on or before the day for the first meeting of the provisional council, determine the division for which such person shall sit (L.G.A. s. 107, sub. 1). The writing must, of course, be sent or delivered to the returning officer, but need not be witnessed. No time is limited within which the person elected is thus to make his choice, nor within which, on such person's default, the returning officer is to determine the question for him, except that in either case it must be "on or before the day for the first meeting of the provisional council," *i.e.* the second Thursday next after the day fixed for the first election (L.G.A. s. 105, sub. 2). The person elected should therefore make his choice within a reasonable time after his election and before such first meeting, and on his default the returning

officer can determine the question as above mentioned. If the returning officer does so determine it, he should immediately give notice of such his determination to the person elected, and to the clerk of the county council.

In subsequent elections, if a person is elected in more than one electoral division, he shall, within three days after notice thereof, choose, by writing signed by him and delivered to the clerk of the county council, or in his default the returning officer shall, within three days after the time for choice has expired, declare for which of those divisions he shall serve, and the choice or declaration shall be conclusive (M.C.A. s. 68; L.G.A. s. 75, sub. 5). The three days are calculated exclusively of Sundays, etc. (M.C.A. s. 230, sub. 3; and see *post*, p. 110). The returning officer's declaration should be in writing, and should be communicated to the person elected, and to the clerk of the county council.

After the first election of county councillors the returning officer shall send to each person elected notice of his election, accompanied by a summons to attend the first meeting of the provisional council at such time and place as the returning officer may fix (L.G.A. s. 103, sub. 5); for a form of this notice and summons, see No. 17, *post*, p. 246. "Time" here means hour; the day of the first meeting of the provisional council is the second Thursday next after the day fixed for the first election (*ib.* s. 105, sub. 2). As to the place of meeting, the provisional council of a county are entitled to use the buildings belonging to the quarter sessions of that county, so that they do not interfere with the holding of any court (*ib.* s. 106, sub. 3), and a hall or room in some one of such buildings seems, therefore, to be an appropriate place at which to hold the first meeting of such provisional council.

Summons to attend first meeting of provisional council.

The times of the various proceedings discussed in this and the preceding chapter are governed by the provisions of M.C.A. s. 230, incorporated in the L.G.A. by L.G.A. s. 75, and their accurate computation is frequently a matter of very considerable difficulty.

COMPUTATION OF TIME.  

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Where an act or proceeding is directed or allowed to Sundays.

CHAP. XI.

be done or taken *on a certain day*, then if that day happens to be a Sunday, Christmas Day, Good Friday, Monday or Tuesday in Easter week, or any day appointed for public fast, humiliation, or thanksgiving, the act or proceeding may be done or taken the next day afterwards (M.C.A. s. 230, sub. 2). Thus, the ordinary day of election of councillors, after the first election, will be the 1st of November (M.C.A. s. 52), and the day for adjudicating on nominations is also a fixed day, viz. the day after the last day for delivery of nomination papers (*ib.* sch. III. part II. r. 9), and if either of these days fall on a Sunday, etc., the election or adjudication is allowed to be held on the following day. But, in either of such cases, the better opinion seems to be that the Monday is substituted for the Sunday only for the purposes of the election or adjudication itself, and not for the purposes of other matters dependent on, or antecedent to, the date of the day of election or adjudication. Thus, the dependent dates are in such cases to be calculated from the Sunday, and not from the substituted Monday. (See the opinion, No. 2, of Sir R. E. Webster, Q.C., A.G., and Mr. R. S. Wright, *post*, p. 249.)

Last day  
falling on a  
Sunday.

Again, where the day of election falls on a Monday, the last day for delivery of nomination papers, which must be delivered "seven days at least before the day of election," is *primâ facie* the Sunday week previous to the day of election. In that case, it would seem that the delivery of the nomination papers is an act "allowed to be done" on a certain day (*i.e.* the Sunday), and which therefore may be well done the following day, and that consequently the last day for their delivery is the following Monday; but that, as this act, the delivery of nomination papers, is not to be done on a single day fixed by the Act (as is the case with the day of election), the dependent dates are to be calculated, not from the Sunday, but from the substituted Monday, as being "the last day for delivery of nomination papers." (See the opinion, No. 3, of Mr. R. S. Wright, *post*, p. 249.)

Time not  
exceeding  
seven days.

Lastly, the M.C.A. s. 230, sub. 3, enacts that where any act or proceeding is directed or allowed to be

done *within* any time not exceeding seven days, Sundays, etc., are not to be reckoned in the computation of such time. But this provision does not affect most of the acts discussed in this or the preceding chapter, as such acts are not to be done *within*, but *more than*, a specified number of days. Thus, the notice of election has to be given nine days at least before the day of election, and these nine days are not the days *within* which the notice may be given, but are the days within which it may *not* be given, and which must elapse *after* it is given. (See the opinion No. 1 of Mr. R. S. Wright, *post*, p. 248.)

The last day on which the notice of election can be given for the first election of county councillors is, in all cases, Monday, the 31st of December, 1888, and the earliest day on which the election can be held, is Monday, the 14th of January, 1889 (L.G.A. s. 103, sub. 1), and wherever the latter day is fixed by the returning officer, the following is, upon the views above expressed, the time table of the other dependent dates.

1889.

Jan. 6, SUN.

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|---|--------------------|---|
| „ | 7, Mon., 4.59 P.M. | Last day and hour for delivery of nomination papers (see <i>ante</i> , p. 100).*                        |
| „ | „ 4.59 P.M.        | Last day and hour for delivery of appointment of candidate's representative (see <i>ante</i> , p. 102). |
| „ | „                  | Notice of nomination to be sent to each candidate (see <i>ante</i> , p. 101).                           |
| „ | 8, Tues., 2.0 P.M. | Last day and hour for delivery of notice of candidate's withdrawal (see <i>ante</i> , p. 105).          |
| „ | „ 2 to 4 P.M.      | Adjudication on objections to nominations (see <i>ante</i> , p. 102).                                   |
| „ | 9, Wed.            | Notice of situation, etc., of polling places (see <i>post</i> , p. 115).                                |

\* “Seven days at least before the day of election” makes Sunday the 6th, *primâ facie* the last day for delivery of nomination papers, and Monday the 7th is therefore substituted.

CHAP. XI. Jan. 10, Thurs.

„ 11, Fri.

„ 12, Sat.

Publication of valid nominations  
(see *ante*, p. 107).

„ 13, SUN.

„ 14, Mon.

Day of election.

Supposing, however, that the day of election be fixed for Friday, the 18th of January, 1889, the following is, upon the views above expressed, the time table of the other dependent dates.

1889.

Jan. 10, Thur., 4.59 P.M. Last day and hour for delivery of nomination papers.

„ „ 4.59 P.M. Last day and hour for delivery of appointment of candidate's representative.

„ „ Notice of nomination to be sent to each candidate.

„ 11, Fri., 2.0 P.M. Last day and hour for delivery of notice of candidate's withdrawal.

„ „ 2 to 4 P.M. Adjudication on objections to nominations.

„ 12, Sat.

„ 13, SUN.

„ 14, Mon. Notice of situation, etc., of polling places.\*

„ 15, Tues.

„ 16, Wed. Publication of valid nominations.

„ 17, Thurs.

„ 18, Fri. Day of election.

Again, supposing that the day of election fell upon Sunday, the 20th of January, 1889, the election would be held on the next day (Monday), and the following would, upon the views above expressed, be the time table of the other dependent dates.

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\* "At least four days before the day of election" makes Sunday the 13th, *primâ facie* the last day for this publication, and Monday the 14th is therefore substituted.

1889.

Jan. 12, Sat.	4.59 P.M.	Last day and hour for delivery of nomination papers.
"	" 4.59 P.M.	Last day and hour for delivery of appointment of candidate's representative.
"	"	Notice of nomination to be sent to each candidate.
"	13, SUN.	
"	14, Mon.	2.0 P.M. Last day and hour for delivery of notice of candidate's withdrawal.
"	" 2 to 4 P.M.	Adjudication on objections to nominations.
"	15, Tues.	Notice of situation, etc., of polling places.
"	16, Wed.	
"	17, Thurs.	
"	18, Fri.	Publication of valid nominations.
"	19, Sat.	
"	20, SUN.	Day of election.
"	21, Mon.	Day of holding election.

These tables afford instances of the different problems that are likely to arise in fixing the dates of the different proceedings in the election of county councillors, under the L.G.A., and for further examples see the Time Tables for the First Election, Chap. XVII. *post*, p. 166.



## CHAPTER XII.

**POLLING DISTRICTS, POLLING PLACES,  
AND POLLING STATIONS.**

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THE M.C.A. and M.E.C.I.P.A. are applied to local government elections by L.G.A. s. 75; the B.A. is applied to the M.C.A. by M.C.A. s. 58.

Definitions.

A polling district is a portion of an electoral division; a polling place is the town, village, or place in a polling district at which the poll is taken; a polling station is the booth, room or building in a polling place at which the votes are given.

POLLING  
DISTRICTS.

In counties.

At the first election of county councillors, the returning officer may, if it appears to him necessary, divide an electoral division into polling districts, so however that every polling district shall be an area or combination of areas for which separate parts of the register of electors are made out (L.G.A. s. 103, sub. 3) As to making up the register in separate parts, see C.E.A. s. 4, sub. 2 (e); s. 7, sub. 1; 48 Vict. c. 15, s. 6, sub. 2. It will be observed that the returning officer is the sole judge of the necessity, if any, of making these divisions.

In boroughs.

Although in a borough the returning officer of the municipal borough election acts as returning officer at

the election of county councillors (see *ante*, p. 56), this power of dividing into polling districts any electoral division which is co-extensive with, or wholly comprised in, such borough, appears to remain in the county returning officer and not to be transferred to the returning officer of the borough. The powers of the latter seem to be limited to acting as the returning officer "*at the election*," "in pursuance of a writ directed to him from the county returning officer" (see L.G.A. s. 75, sub. 6), and this division into polling districts precedes the holding of the election. Even if this view be erroneous, the borough returning officer "shall follow the instructions of the county returning officer," so that practically the power of dividing an electoral division into polling districts lies with the latter official, whatever be the true construction of the subsection.

In future elections the county council will, if they see fit, divide the electoral divisions into polling districts (M.C.A. s. 64).

At the first election of county councillors the returning officer shall settle and give proper notice of the places at which the poll for each electoral division, or district of a division, shall be taken (L.G.A. s. 103, sub. 3). No form or length of notice is prescribed; the form used should therefore be clear and easily intelligible, and the notice should be given a reasonable time before the poll, and should be so published as to give every elector a fair opportunity of becoming acquainted with its contents.

POLLING  
PLACES.  

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In a borough this duty also appears to remain in the county returning officer, and not to be transferred to the returning officer of the borough for the reasons already stated *supra*. But the former can no doubt instruct and authorise the latter to determine the above questions, and to settle and give this notice.

The returning officer or his deputy shall at least four days before the day of election, give public notice of the situation, division, and allotment of polling places for taking the poll at the election, and of the description of persons entitled to vote thereat, and at the several

Notice of  
situation, &c.,  
of polling  
places, &c.

## CHAP. XII.

polling stations (M.C.A. sch. III. part III. r. 2). "At least" means clear days (see *ante*, p. 88); as to the mode of computing these four days, see *ante*, p. 110, and as to the days on which this notice must be given for the first election, see *post*, p. 169. "Public notice" is given by advertisements, placards, handbills, or such other means as the returning officer thinks best calculated to afford information to the electors (B.A. r. 46). The name and address of the printer and publisher must appear upon the face of every bill, placard, or poster used in giving this public notice (M.E.C.I.P.A. s. 14). No form of notice is prescribed; a suitable form can be framed from that given in Election Agent, No. 62, p. 524. The giving of this notice is clearly a step in the election, and should in a borough be given by the returning officer of the borough, and not by the county returning officer (*cf. ante*, p. 114).

There is no enactment requiring polling places to be assigned to polling districts in such manner as that every elector shall have his polling place within three miles from his residence, as is requisite at parliamentary elections (C.I.P.P.A. s. 47).

Use of school  
and public  
room.

The returning officer and his deputy may use any room in a school receiving a parliamentary grant, and any room maintained out of a local rate, for the purpose of taking the poll, in the same manner and under the same liability to make good any damage as in the case of the adjudication on nomination papers (see *ante*, p. 102).

Requisites for  
taking the  
poll.

The returning officer or his deputy shall provide everything which in the case of a parliamentary election is required to be provided by the returning officer for the purpose of a poll, and shall appoint officers for taking the poll (M.C.A. sch. III. part III. r. 3). He must therefore provide such polling stations, ballot boxes, ballot papers, stamping instruments, copies of register of voters and other things, appoint and pay such officers, and do such other acts and things as may be necessary for effectually conducting an election in manner provided by the B.A. (B.A. s. 8). As to the officers whom the returning officer must appoint, pay, and provide, see *ante*, p. 62.

At every polling place the returning officer or his deputy shall provide a sufficient number of polling stations for the accommodation of the electors entitled to vote at such polling place, and shall distribute the polling stations amongst those electors in such manner as he thinks most convenient (B.A. r. 15). A separate room or booth may contain a separate polling station, or several polling stations may be constructed in the same room or booth (*ib.* r. 17). A poll cannot be taken in any church, chapel, or other place of public worship (M.C.A. s. 69). Several suggestions as to the form of the polling station are to be found in Election Agent, p. 139.

CHAP. XII.  
—  
POLLING  
STATIONS.  
—

The returning officer or his deputy shall furnish every polling station with such number of compartments in which the voters can mark their votes screened from observation, and furnish each presiding officer with such number of ballot papers as in the judgment of the returning officer or his deputy may be necessary for effectually taking the poll at the election (M.C.A. sch. III. part III. r. 4). This is in lieu of the unapplied (*ib.* r. 1) provision B.A. r. 16, under which at least one compartment must be provided for every 150 electors entitled to vote at such polling station. For a form of contract or agreement to provide compartments and furnish polling stations, see No. 2, *post*, p. 230.

Compartment-  
ments for  
marking the  
votes.

Ballot boxes, fittings for polling stations, and compartments provided for parliamentary boroughs may be used at a county councillors' election in such borough free of charge, and any damage, other than reasonable wear and tear, shall be paid as part of the expenses of the election at which they are used (B.A. s. 14), and it is the duty of the returning officer, so far as is practicable, to make use thereof and of any ballot boxes, fittings, and compartments provided for school board elections (38 & 39 Vict. c. 84, s. 6; L.G.A. s. 75, sub. 19).

The directions for the guidance of voters must be placarded outside every polling station and in every compartment (B.A. sch. II. note at head of the directions; and see Election Agent, pp. 141, 486).

Directions  
for the  
guidance of  
voters.

## CHAP. XII.

Ballot box,  
stamping  
instrument,  
ballot papers,  
&c.

As to the ballot box, stamping instruments, official mark, ballot papers, pencils for marking the ballot papers, and registers of voters, see B.A. s. 8, and rr. 23, 20, 24, 22, 27, and Election Agent, pp. 142 *et seq.* No special form of ballot paper is prescribed for use at local government elections, but, as the provisions of B.A. relating to a poll apply (M.C.A., s. 58, sub. 1), the provisions of B.A. r. 22 are applied, including the form prescribed by that rule, (as to which see Election Agent, pp. 143, 471).

## CHAPTER XIII.

CHAP. XIII.

## CONVEYANCE OF VOTERS TO THE POLL.

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THE M.E.C.I.P.A. is applied to local government elections by L.G.A. s. 75.

It is an illegal hiring to :—

1. *Let or hire,*
2. *Lend or borrow,*
3. *Employ or use,*

Illegal hiring  
to let, borrow,  
&c., carriages,  
&c.

for the purpose of the conveyance of electors to or from the poll, any public stage or hackney carriage, or any horse or other animal kept or used for drawing the same, or any carriage, horse, or other animal which a person keeps or uses for the purpose of letting out for hire (M.E.C.I.P.A. s. 10, subs. 1, 2). The offence of illegal hiring becomes an illegal practice when committed by the candidate or with his knowledge or consent (*ib.* s. 17, sub. 2), and when so committed the election may be avoided (*ib.* s. 8, sub. 2). But a person who hires, borrows, or uses, for the purpose of the conveyance of electors to or from the poll, a prohibited carriage, horse, or other animal, is not guilty of an illegal hiring, unless he knows that its owner is prohibited by the statute from letting, lending, or employing the same for that purpose (*ib.* s. 10, sub. 2).

It is also an illegal practice to *pay or contract to pay*, and knowingly to *receive payment*, or *be party to any contract for payment*, for the conveyance of electors to or

Illegal prac-  
tice, to pay,  
&c., for voter's  
conveyance.



CHAP. XIII. from the poll, whether for the hiring of horses or carriages, or for railway fares, or otherwise (M.E.C.I.P.A. s. 4, sub. 1, *a* ; sub. 2) ; and if the offender be an agent of the candidate the election may be avoided (*ib.* s. 8, sub. 2). It is thus an illegal practice to pay, or receive payment, or to contract for payment, for the conveyance of voters to or from the poll, whether by horses or carriages, railway fares or passes, ferry or other boats, steamers, sailing ships, "or otherwise." "Payment" includes pecuniary reward, valuable security, or consideration (C.I.P.P.A. s. 64 ; M.E.C.I.P.A. s. 34), and thus includes refreshment (*Barrow-in-Furness*, 4 O.M. & H. 78).

Difference  
between the  
two sections  
and offences.

The material difference between the two sections of the M.E.C.I.P.A. (s. 10, subs. 1, 2, and s. 4, sub. 1, *a*)—the offence of illegal letting or hiring under the latter being an illegal practice by whomsoever committed, while under the former it is an illegal payment merely, unless the offender be the candidate or his agent,—naturally invites all parties concerned to endeavour to bring any particular case of letting or hiring within the section (s. 10,) which carries with it the lesser punishment and does not avoid the seat. The earlier section (s. 4) is more general in its terms than the later section (s. 10), and therefore, in accordance with the rule that where a general intention is expressed incompatible with a particular intention also expressed, the particular intention is to be considered in the nature of an exception (*Churchill v. Crease*, 5 Bing. 180 ; and see *Pretty v. Solly*, 26 Beav. 610), and with the further rule that an earlier gives way to a later passage (Maxwell, 46), any case that falls within s. 10 must, it is submitted, be considered as excepted from s. 4. It may possibly be held that the penalties under the two sections are cumulative, but the better construction seems to be that the later section of the Act (s. 10) qualifies the earlier, and takes the persons therein specifically dealt with out of the general words of the earlier section (s. 4).

Voters may be  
conveyed in  
borrowed  
carriages, etc.

There is nothing to prevent the conveyance of voters to or from the poll in carriages, steam vessels, ships, barges or boats, or on horses or other animals, lent

gratuitously for the purpose, provided that the same be not kept or used for the purpose of letting out on hire (M.E.C.I.P.A., s. 10, subs. 1, 2, *ante*, p. 119). Nor is the employment of the driver, captain, or person in charge of the borrowed carriage, vessel, etc., an employment contrary to the Act, if their payment or remuneration is made by their respective owners, and not by the candidate or his agent.

The lending must be perfectly *bonâ fide*, and not upon any understanding, express or implied, that the lender is to receive any reward, valuable security, or payment. No payment must be made by or on behalf of the candidate to the coachman, or driver, nor must any person be hired or paid to drive a borrowed vehicle.

The object for which a horse, carriage, etc., is kept in non-election times seems to govern its loan and use in election times ; and the prohibition appears to be directed against the employment of vehicles, etc., ordinarily hired for the conveyance of *passengers*, rather than of goods or merchandise. A livery-stable keeper cannot lend a single carriage or horse, nor can he use his own carriage or horse to convey his own friends to or from the poll. A carriage or horse which a person keeps and generally uses for his own trade or pleasure, but which he sometimes lets out for hire, may probably be lent and used, and so also a carriage or horse hired on job and not for the occasion. Farmers, tradesmen, and others may safely lend or use the carts, traps, waggons, horses, etc., which they keep for the purposes of their trade, even though they may, on the poll day, hire other vehicles to replace these so lent or used ; but any cart, trap, horse, etc., which is kept for the express purpose of being let out for hire, although the owner occasionally uses it for his own purposes, is clearly prohibited. A spring van or cart intended and used for the conveyance of goods or removal of furniture, and only occasionally used for the conveyance of pleasure parties, may perhaps also be lent or used.

Persons are not liable to licence duty under 32 & 33 Vict. c. 14, or 35 & 36 Vict. c. 20, by reason only of their

Exemption  
from licence  
duty.

CHAP. XIII. carriage being used, without payment or promise of payment, for the conveyance of voters to or from the poll (M.E.C.I.P.A. s. 10, sub. 4).

An elector may pay for his own conveyance to the poll.

So may several electors at their joint cost.

The M.E.C.I.P.A. expressly permits a carriage, horse, or other animal being let to, or hired, employed, or used by an elector, or several electors at their joint cost, for the purpose of being conveyed to or from the poll (M.E.C.I.P.A. s. 10, sub. 3). An elector may therefore pay for his own conveyance in a public stage or hackney carriage (a coach, omnibus, or cab), or on horseback, or by railway, to or from the poll, and so may several electors at their several or joint cost,—though it does not appear that he or they are expressly authorised to hire a boat or any sea or river-going craft for the same purpose. There is no definition of the term “joint cost,” and if two electors hire and proceed to or from the poll in a hackney carriage, and one of them only pays the whole fare, it would seem that the two electors, and also the owner of the carriage, if he knew of the purpose for which it was hired, are each and all guilty of an illegal hiring. If each contribute something, but one pay the substantial part of the whole fare, they are probably each similarly guilty. But if one elector *bonâ fide* hire a hackney carriage to convey himself to or from the poll, and on his way pick up another elector and give him a seat in the carriage, without requiring him to pay his share of the cost, it seems doubtful whether either the elector or the owner of the carriage be guilty of an illegal hiring, as the carriage was originally lawfully hired, and the case does not fall within the words of the prohibition.

A form of “Voter’s Polling Card” is given in Election Agent, No. 41, p. 508. As to the use of such a card, and as to how far it may recommend a voter to vote in a particular manner, see *Stepney*, 40 M. & H. 55.

## CHAPTER XIV.

## CHAP. XIV.

## THE POLL.

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THE M.C.A. and M.E.C.I.P.A. are applied to local government elections by L.G.A. s. 75; the B.A. is applied to the M.C.A. by M.C.A. s. 58; and 6 Vict. c. 18 by M.C.A. s. 86.

The poll is conducted in precisely the same way as at a parliamentary election. The poll is taken on the day of election. It commences at 8 A.M. and is kept open until 8 P.M. and no longer (48 Vict. c. 10, s. 1; L.G.A. s. 75, sub. 11), Greenwich mean time (43 & 44 Vict. c. 9, s. 1).

Just before the opening of the poll, the presiding officer shows the ballot box empty to the persons Opening the poll.

CHAP. XIV. present in the station, locks it, seals it, and places it in his view for the receipt of ballot papers (B.A. r. 23).

Bringing up  
voters.  
Persons  
prohibited  
from voting.

Great care must be taken not to bring up any voter who is prohibited by law or statute from voting. Any person who is prohibited by law from voting is not entitled to demand a ballot paper, or to vote (M.C.A. s. 51, subs. 1, 3); and any person who brings up any person, knowing that such person is prohibited by statute from voting, and who thereby induces or procures such person to vote, is guilty of an illegal practice (M.E.C.I.P.A. s. 6, sub. 1). The person who votes knowing that he is so prohibited, is similarly guilty (*ib.*); and if in thus voting, he applies for a ballot paper in the name of some other person, whether that name be that of a person living or dead, or of a fictitious person, he is also guilty of personation (B.A. s. 24). As to who are prohibited from voting, see Chap. III. *ante*, p. 10.

Persons  
entitled to  
vote.

Any person, who is not prohibited by law, is entitled to demand and receive a voting paper, and to vote, if he is enrolled in the burgess roll for the electoral division, or registered in the register of county electors for the electoral division (as the case may be), and not otherwise (M.C.A. s. 51, sub. 1). The existence of the name upon the burgess roll or register is conclusive on the presiding officer, and he is not entitled to inquire into the person's qualification, or to refuse to deliver a ballot paper, even though the person demanding it be disqualified or prohibited from voting, and therefore liable to have his vote disallowed on a scrutiny.

Conclusive-  
ness of  
register.

Voting at  
wrong polling  
station.

No person shall be admitted to vote at any polling station except the one allotted to him (B.A. r. 18); and if he votes at a wrong station his vote is liable to be struck off on a scrutiny (*Oldham*, 1 O'M. & H. 165). The presiding officer should in such a case refuse the vote, and direct the voter to go to the proper station (*ib.*).

Delivery of  
ballot paper.

The presiding officer must satisfy himself that every elector demanding a ballot paper is on the burgess roll or register (M.C.A. s. 51, sub. 1), and that he is entitled to vote at the station over which he presides (B.A. r. 18).

This being ascertained, the presiding officer, or poll clerk, shall call out the name, number and description of the voter as stated in the register, shall mark the voter's number on the counterfoil ballot paper, shall place a mark in the register against the number of the voter to denote that he has received a ballot paper, but without showing the particular ballot paper which he has received, and shall mark the ballot paper on both sides with the official mark, and then deliver it to the voter (B.A. s. 2 and r. 24). The candidates and their polling agents have no right to know, and ought not to be allowed to see or learn, the number of a ballot paper delivered to a voter (*Thornbury*, 2 T. L. R. 486). CHAP. XIV.

If the presiding officer, or poll clerk, fail to mark the back of the ballot paper with the official mark, thus rendering the vote void, he (and perhaps also the returning officer) is liable in an action to the candidate who has thereby lost the election (*Pickering v. James*, L. R. 8 C. P. 489; *acc. Thornbury*, 16 Q. B. D. 752).

Having received a ballot paper, the voter shall forthwith proceed into one of the compartments in the polling station and there secretly mark his ballot paper (B.A. s. 2 and r. 25) with the pencil provided in the compartment, by placing a cross on the right-hand side of the ballot paper, opposite to the name of the candidate for whom he votes (B.A. sch. II., Directions to Voters). If the voter write or mark upon the ballot paper anything by which he can be identified (B.A. s. 2), or if he so mark his ballot paper as that it is void for uncertainty (*ib.* r. 36), or if he mark it with votes for more candidates than he is entitled to vote for, his ballot paper will be void and not counted (*ib.* s. 2). Secret marking by voter.

Having thus secretly marked his ballot paper, the voter shall fold it up so as to conceal his vote, but so as to show the official mark on the back, and, leaving the compartment, shall, without showing the front of the paper to any person, show the official mark on the back to the presiding officer, and then in the presence of the presiding officer, shall put his ballot paper, so folded up, into the ballot box (B.A. s. 2 and r. 25). No person Folding up the ballot paper.  
Showing the official mark.



CHAP. XIV. shall directly or indirectly induce any voter to display his ballot paper after he has marked the same, so as to make known to any person the name of the candidate for or against whom he has so marked his vote, and any person acting in contravention of this provision is liable to imprisonment for six months with hard labour (B.A. s. 4). The voter shall vote without undue delay, and shall quit the polling station as soon as he has put his paper into the ballot box (B.A. r. 25) ; if he does not so quit the polling station, he may, after being ordered to leave by the presiding officer, be removed by order of the presiding officer (*ib.* s. 9), but not of a poll clerk (*ib.* r. 50).

Voter shall  
quit the  
station  
after voting.

Ballot paper  
without  
official mark.

The presiding officer, or his poll clerk, is bound to look at the ballot paper, to see that the official mark is on its back before the voter puts it into the ballot box (*Pickering v. James*, L. R. 8 C. P. 489 ; *Thornbury*, 16 Q. B. D. 752). If the presiding officer, or poll clerk, then sees that inadvertently a ballot paper has been delivered out without the official mark, he can at once rectify the inadvertence by informing the voter of the omission, cancelling the unstamped paper (being first satisfied that it is, in fact, the genuine paper delivered out to the voter), and delivering out to him another paper duly stamped, upon which the voter may effectually record his vote (*Thornbury*, 16 Q. B. D. 752). What course the presiding officer should take if the voter insists on putting into the box a ballot paper which the presiding officer thinks is void for want of the official mark, is an unsettled question ; it may be that, though irregular, the presiding officer is bound to admit it, leaving it to the returning officer on the counting of the votes to decide whether it ought to be rejected (*ib.*) ; and it may be that the presiding officer should prevent it from being put into the ballot box (see *S. C.*, 2 T. L. R. 488). Until the point is judicially determined, the former seems to be the more prudent course for the presiding officer to take

Voting twice.

The second vote of a person who votes twice at the same election is bad, and will be struck off on a scrutiny (see *Stirlingshire*, F. & F. 541), and so also if he be entered

twice in the register under different names (see *Oldham*, CHAP. XIV. 1 O'M. & H. 156; and see the second question which may be put to a voter, *post*, p. 128).

It would seem that although a county elector may be registered in more than one division register (C.E.A., s. 7, sub. 4, and *cf.* M.C.A. s. 45, sub. 6), he cannot vote in more than one division (M.C.A. s. 51, sub. 2). If this be law, and if nevertheless he does vote in more than one division, his second vote is bad in any case, but his first vote is good, unless given under such circumstances as to make him guilty of personation (*R. v. Harrauld*, L. R. 8 Q. B. 418; *R. v. Tugwell*, L. R. 3 Q. B. 704; *Stepney*, 4 O'M. & H. 43; *St. Andrews*, *ib.* 32).

A voter who has inadvertently dealt with his ballot paper in such manner that it cannot be conveniently used as a ballot paper, may, on delivering that ballot paper to, and proving the fact of the inadvertence to the satisfaction of, the presiding officer, obtain another ballot paper, and the spoilt ballot paper shall be immediately cancelled (B.A. r. 28), but must not be destroyed, as it has to be made into a packet with the unused and other spoilt ballot papers, and delivered to the returning officer (B.A. r. 29, sub. 2; and see *post*, p. 134).

If the voter inadvertently mark the ballot paper wrongly, *i.e.* if intending to mark it for A. he mark it for B., he may treat his ballot paper as a spoilt ballot paper, and apply to the presiding officer for another. This he must, of course, do before he has deposited the ballot paper in the ballot box, for until then, but not afterwards, he is entitled to correct his mistake (*Stirlingshire*, F. & F. 542; and compare *Taunton*, *ib.* 299; *Monmouth*, K. & O. 413). In such circumstances he is not to be directed to vote upon a tendered ballot paper, as the case does not fall within the words or meaning of the rule relating to tendered ballot papers (B.A. r. 27; and see *post*, p. 131).

If the voter :—

1. Is incapacitated from blindness, or other physical cause, from voting in manner prescribed by the Act; or,

Blind, Jewish,  
and illiterate  
voters.

## CHAP. XIV.

2. Verbally declares (if the poll be taken on a Saturday) that he is of the Jewish persuasion, and objects on religious grounds to vote in manner prescribed by the Act ; or

3. Makes a declaration (form B.A. sch. II. Election Agent, p. 482), that he is unable to read ;

the presiding officer shall, on the application of the voter, and in the presence of the agents of the candidates (B.A. r. 26), or such of them as are in attendance (*ib.* r. 55), but apparently excluding the constables, and certainly all other voters, they not being under the declaration of secrecy, cause the voter's ballot paper to be marked as directed by him and placed in the ballot box (*ib.* r. 26). The declaration of inability to read must be read to the voter by the presiding officer (or his clerk, *ib.* r. 50), and must be signed by the voter, with his mark, in the presence of the presiding officer, who must sign the certificate at the foot of such declaration. The name and number of every voter whose vote is so marked, and the reason, shall be entered on "The list of votes marked by the presiding officer" (*ib.* r. 26). For a form of this list, see Election Agent, p. 513.

A Jew who is unable to read may vote without making the above declaration of inability to read when the poll is taken on a Saturday, because on that day his ballot paper may be marked for him by the presiding officer ; but he must make such declaration when the poll is taken on any other day in the week.

The presiding officer shall, if required by two burgesses, or county electors (as the case may be), or by a candidate or his agent, put to any person offering to vote, at the time of his presenting himself to vote, but not afterwards, the following questions, or either of them :

(a). Are you the person enrolled in the burgess roll [*or* registered in the register of county electors] now in force for this electoral division as follows [*read the whole entry from the roll or register*] ?

(b). Have you already voted at the present election in this or any other electoral division ?

(M.C.A. s. 59, sub. 1).

The first of the above two questions is as to the identity of the *person* and not as to the identity of *name*. The inquiry is not whether the voter's name *is* A. B., but whether he is the *person* whose name (whatever that may be) *appears* as A. B. He is not asked whether the name on the register is his real name, but whether he is the person whose name appears on the register. The person actually registered may therefore safely answer this question, although his name is incorrectly stated on the register (*R. v. Thwaites*, 1 E. & B. 704; *Sligo*, W. & D. 227; *Taunton*, F. & F. 295; *Oldham*, 1 O'M. & H. 152, 153). A ballot paper must therefore not be refused on account of any mere misnomer or inaccurate description in the register (*ib.*).

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Meaning of the questions

The above questions must be asked in the very words of the Act (2nd *Canterbury*, K. & O. 326); they should be calmly and deliberately proposed, and the presiding officer should take care that the voter in making his reply is protected from interruption or interference.

How put.

The presiding officer may not put the questions of his own motion, or without the demand of two electors, or of a candidate, or of a candidate's polling agent (M.C.A. s. 59, sub. 1), or of a person acting as such agent (*R. v. Spalding*, Car. & Marsh, 568); and, if he should do so, the voter may decline to answer, and a refusal under such circumstances would not entitle the presiding officer to decline to give him a ballot paper, nor could the voter be convicted of the misdemeanour.

When to be put.

If the above questions are satisfactorily answered by the voter, the presiding officer cannot refuse to allow the voter to vote, and if he do refuse, he may render himself liable to a criminal prosecution for the breach of a public duty, even though he knew that the voter has answered falsely (*Pryce v. Belcher*, 4 C. B. 866); he must leave it to the candidate's agents to take notice of the fraud, and to apply to strike off the vote on a scrutiny. A wilfully false answer is a misdemeanour (M.C.A. s. 59, sub. 3).

Satisfactory answers.

False answers.

If the questions are substantially, though not categorically, answered, the voter should, it seems, be allowed to vote (see *Monmouth*, K. & O. 414; *New Sarum*, P. & K.

Unsatisfactory answers.

CHAP. XIV. 255 ; *Taunton*, F. & F. 305) ; but if from his answers he makes it appear to the presiding officer that he is not the person registered in the register, or that he has already voted at the election in that or any other division, the presiding officer should refuse to allow him to vote (M.C.A. s. 59, subs. 1, 2).

Refusal to answer. A refusal to answer the questions at one period of the day, does not act as a disqualification at another (*Taunton*, F. & F. 305), but until the voter has answered the questions his vote shall not be received (M.C.A. s. 59, sub. 2).

No other inquiry permissible. No inquiry, other than the two above questions, shall be permitted at an election as to the right of any person to vote (M.C.A. s. 59, sub. 4). Nor are any other dealings with, or inquiries of, the voter permissible. The voter must not be asked, for example, to spell his name, nor must he be refused a ballot paper if there be any variance between his spelling of his own name and that on the register (*Canterbury*, K. & O. 134). So, also, an inquiry as to whether the voter votes in respect of an old or a new qualification is illegal (*Bedford*, C. & R. 87 : P. & K. 139) ; and a voter may not be asked if he has bribed, or anything of that kind, or anything to show that if he does vote, he will be liable to any prosecution (*Worcester*, 3 O'M. & H. 187).

No oath. It is submitted that no oath or affirmation can in any case be administered to a voter at a local government election. It is said (Arnold, p. 284) that the legislature has prescribed that an oath shall be taken at municipal elections (and if so at local government elections,) in the particular case of an elector who applies for a ballot paper after another person has voted as such elector (B.A. r. 27), and in that case only. But there was no power to administer any oath under the M.C.A. of 1835 (5 & 6 Will. IV. c. 75), or prior to the B.A. of 1872, and s. 59 of the M.C.A. of 1882 is merely a re-enactment of s. 34 of the M.C.A. of 1835, which again is an application of so much of 6 Vict. c. 18, s. 81, relating to parliamentary elections, as the legislature deemed it well to apply to municipal elections. And B.A. r. 27, under which the



power is said to arise, enacts that the voter shall take the oath "permitted by law to be administered," which assumes that permission to administer an oath already exists under some prior statute. Such a permission is to be found with reference to parliamentary elections in 6 Vict. c. 18, s. 81; but no such permission can be found in any of the statutes relating to municipal elections, and it is to be remembered that B.A. r. 27 was primarily enacted with reference to parliamentary elections. Upon these grounds it seems difficult to believe that the legislature has thus, by inference merely and not by direct enactment, enabled an official to administer an oath which, as is admitted, he could not administer prior to 1872, or thus to subject a person to the pains and penalties of perjury, and to administer an oath to the real voter, voting under B.A. r. 27, when the personator can only be subjected to the questions contained in M.C.A. s. 59, and to the misdemeanour therein mentioned.

If a person, representing himself to be a particular elector named on the register, applies for a ballot paper after another person has voted as such elector, the applicant shall, upon duly answering the two statutory questions, be entitled to mark a ballot paper in the same manner as any other voter, but such ballot paper shall be of a colour differing from the other ballot papers, and, instead of being put into the ballot box, shall be given to the presiding officer, and indorsed by him with the name of the voter and his number in the register of voters, and set aside in a separate packet, and shall not be counted by the returning officer; and the voter's name and number on the register shall be entered on the tendered votes list (B. A. r. 27); for a form of this list see Election Agent, p. 512. The tender does not seem to be complete until the voter has answered the questions, and the onus appears to be on him to demand that they be put. The onus does not seem to be upon the presiding officer, and clearly it is not upon the polling agent of either candidate, as it is under 6 Vict. c. 18, s. 81. On a scrutiny, the vote of the person

CHAP. XIV.

Tendered  
votes after  
personation.



CHAP. XIV. personating will be struck off, and the vote of the person tendering, added (*Oldham* 1 O'M. & H. 152; *St. Andrews*, 4 *ib.* 32). The omission of the presiding officer to indorse the voter's name, &c. will not invalidate the vote (*Stepney*, *ib.* 43).

Persons  
entitled to  
admission to  
the station.

The only persons whom the presiding officer can admit to the polling station are the poll clerks, the candidate's polling agents (each of whom may be required by the presiding officer to exhibit his appointment or give other evidence thereof, and of his identity), the constables on duty, the candidates, provided they do not interfere with the polling or otherwise misconduct themselves (B.A. s. 9; *Clementson v. Mason*, L. R. 10 C. P. 209), two electors (M.C.A. s. 59, sub. 1), and such further number of electors as the presiding officer may determine to admit at any one time (B.A. r. 21). He shall exclude all other persons (*ib.*).

Keeping order  
at station.

The presiding officer shall keep order at his station; he shall regulate the number of electors to be admitted at a time, and shall exclude all unauthorized persons (B.A. r. 21, and *supra*). He may order any constable in or near his polling station, or any other person authorized in writing by the returning officer, immediately to remove any person who misconducts himself in the polling station, or who fails to obey the lawful orders of the presiding officer, and the person so removed, even if he be the candidate (*Clementson v. Mason*, L. R. 10 C. P. 209), shall not, unless with the permission of the presiding officer, again be allowed to enter the polling station during the day (B.A. s. 9). But these powers shall not be exercised so as to prevent any elector, who is otherwise entitled to vote at any polling station, from having an opportunity of voting at such station (*ib.*); and they must be exercised by the presiding officer himself and not by a poll clerk (*ib.* r. 50). If the person so removed is charged with the commission in the polling station of any offence, he may be kept in custody until he can be brought before a justice of the peace (*ib.* s. 9). In case of confusion, or the intrusion of too many persons, the presiding officer may order the polling station to be

Ejection of  
offenders.

cleared and order to be restored before proceeding with the poll (*Worcester*, 3 O'M. & H. 188). CHAP. XIV.

Every officer, clerk, and agent in attendance at a polling station shall maintain, and aid in maintaining, the secrecy of the voting in such station, and shall not communicate, except for some purpose authorized by law, before the poll is closed, to any person, any information as to the name or number on the register of voters of any elector who has or has not applied for a ballot paper, or voted at that station, or as to the official mark; and no such officer, clerk, or agent, and no person who-soever shall interfere with, or attempt to interfere with, a voter when marking his vote, or otherwise attempt to obtain in the polling station information as to the candidate for whom any voter in such station is about to vote or has voted, or communicate at any time to any person any information obtained in a polling station as to the candidate for whom any voter in such station is about to vote or has voted, or as to the number on the back of the ballot paper given to any voter at such station under pain of imprisonment for six months with or without hard labour (B.A. s. 4). The presiding officer should insist on the candidate's polling agents remaining in the seats appointed for them, and should not allow them to hold any secret communication with any other voter or person.

If at the time any person tenders his vote (*i.e.* applies for a ballot paper, B.A. s. 15), or after he has voted, and before he leaves the polling station, any candidate's polling agent shall declare to the presiding officer that he verily believes, and undertakes to prove, that the said person so voting (or so applying for a ballot paper, B.A. s. 15) is not in fact the person in whose name he assumes to vote (or applies for a ballot paper, B.A. s. 15), or to the like effect, then the presiding officer (but not the poll clerk, B.A. r. 59) shall immediately after such person shall have voted (or applied for a ballot paper, B.A. s. 15), by word of mouth order any constable or other peace officer to take the said person so voting (or applying for a ballot paper, B.A. s. 15) into Arrest of personators.

CHAP. XIV. his custody; but the presiding officer shall not be entitled to reject the vote of any person who shall answer in the affirmative the statutory questions; and the presiding officer (or his poll clerk, B.A. r. 50) shall cause the words "protested against for personation," to be placed against the voter's name in the marked register (6 Vict. c. 18, s. 86; B.A. r. 38; M.C.A. s. 86). The offender is then taken before two justices, or, if one only can be found, before such one, by whom he may be admitted to bail (6 Vict. c. 18, s. 87). On hearing the charge, the justices, if satisfied on the evidence of two witnesses of the truth of the charge, may commit the offender to trial (*ib.* s. 88); or if not so satisfied, or if the polling agent making the charge does not appear, the justices may award compensation to be levied by distress on the goods of the polling agent or his candidate, or by action of debt (*ib.* s. 89).

Close of the poll.

The poll closes at 8 P.M. (48 Vict. c. 10, s. 1; L.G.A. s. 75, sub. 11), Greenwich mean time (43 & 44 Vict. c. 9, s. 1); and after that hour no ballot paper must be given out, or vote received unless, it would seem, from voters who have obtained admission to the polling station and have applied for ballot papers before that hour (*Worcester*, 3 O'M. & H. 189).

Clearing the station.

Upon the poll being closed, the presiding officer of each polling station should at once clear his station of all persons, except his poll clerks, the candidate's polling agents, and any constables whom he may think it desirable to retain in the station. The ballot box shall be sealed up so as to prevent the introduction of additional ballot papers (B.A. s. 2), and the presiding officer, as soon as practicable after the close of the poll, shall, in the presence of such agents of the candidates (as are in attendance, *ib.* r. 55), make up into separate packets, sealed with his own seal and the seals of such agents of the candidate as desire to affix their seals (*ib.* r. 29):—

Sealing up the ballot box.

Making up the packets.

1. The ballot box unopened, but with the key attached (B.A. r. 29), and with the opening sealed up (*ib.* s. 2).
2. The unused (ordinary and tendered) ballot papers,

with their counterfoils, and the spoilt ballot papers, placed together (B.A. r. 29). If a ballot paper book be partly used, it must be cut, so that the counterfoils of all the ballot papers not used, with the ballot papers attached, may be put into this packet. CHAP. XIV.

3. The tendered ballot papers used (B.A. r. 29).
4. (a) The marked copy of the register of voters ; and (b) the counterfoils of the ballot papers used (B.A. r. 29), both ordinary and tendered. These must be sealed up separately, and then enclosed in one packet (*Stowe v. Joliffe*, L.R. 9 C.P. 446). If a ballot paper book be partly used, it must be cut, so that the counterfoils of all ballot papers used may be put into this packet, but not the counterfoils of ballot papers not used, which latter must be put into packet No. 2.
5. (a) The tendered votes list ; (b) the list of votes marked by the presiding officer ; (c) the statement of the number of the voters whose votes are so marked by him (for a form of this statement, see Election Agent, p. 533) ; and (d) the declarations of inability to read (B.A. r. 29).

The presiding officer should also make up into separate packets and seal with his own seal :—

6. The ballot paper account correctly filled up and showing the number of ballot papers intrusted to him, and accounting for them under the heads of ballot papers in the ballot box, unused, spoilt, and tendered ballot papers (B.A. r. 30). For a form of this account, see Election Agent, p. 472.
7. The appointments of presiding officer and poll clerks.

The presiding officer shall, as soon as practicable, deliver to the returning officer the ballot box and the above-mentioned packets (B.A. r. 29), and he should also deliver to him the stamping instrument, the unused declarations of inability to read, and all the unused

Delivery to  
the returning  
officer.

CHAP. XIV. forms, cards, paper, and stationery supplied to his station.

Travelling  
expenses.

Travelling expenses, at not exceeding one shilling per mile, for conveying the ballot boxes from the polling stations to the place appointed for counting are allowed, provided the distance exceeds two miles (38 & 39 Vict. c. 84, sch. I. ; L.G.A. s. 75, sub. 18, and see further as to travelling expenses, *ante*, p. 65).

The subject of this chapter is further dealt with, and various practical suggestions are made, in the "Instructions to Polling Agents," No. 7, *post*, p. 233 ; and in the "Instructions to Presiding Officers," No. 38, Election Agent, p. 492.

## CHAPTER XV.

## CHAP. XV.

COUNTING THE VOTES, DECLARATION  
OF RESULT, AND REPORTS.

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THE M.C.A. is applied to local government elections by L.C.A., s. 75 ; the B.A. is applied to the M.C.A. by M.C.A. s. 58.

The counting of the votes is conducted in precisely the same manner, and under substantially the same statutory provisions, as at a parliamentary election, but the provision as to the casting vote is different (see *post*, p. 148).



## CHAP. XV.

Preparations  
for counting.

The returning officer shall appoint officers for counting the votes (M.C.A. sch. III. part III. r. 3), and shall provide such things, and do such other acts and things as may be necessary for effectually (B.A. s. 8) counting the votes, and ascertaining the result. The returning officer must therefore provide clips, files, or counting forms for separating the differently marked ballot papers into classes (according to the system he may adopt), baskets, bags, or boxes for containing the different packets; and forms of the several reports, notices, etc., discussed in this Chapter. As to the competent persons and clerks whom he may appoint to assist him, see *ante*, p. 63).

Place of  
counting.

The returning officer and his deputy may use, free of charge, for the purpose of counting the votes, any room in a school receiving a grant out of moneys provided by Parliament, and any room the expense of maintaining which is payable out of any local rate, in the same manner and under the same conditions as in the case of the adjudication on nomination papers (L.G.A. s. 75, sub. 16, *g*; B.A. s. 6, and see *ante*, p. 102).

Notice of  
counting.

Before proceeding to count the votes, the returning officer shall give to the agents of the candidates appointed to attend at the counting of the votes, notice in writing of the time and place at which he will begin to count (B.A. r. 32), by delivering such notice at, or sending it by post to, the address of each such candidate (B.A. r. 52); for a form of this notice, see Election Agent, p. 526. No length of notice is prescribed; but, inasmuch as the candidates may appoint their agents up to one clear day before the opening of the poll (B.A. r. 52), the returning officer cannot tell until then to whom he may have to give such notice, and thus the day before, or the day of, the opening of the poll seems naturally to be the time when he should give this notice. He is only bound to give notice to such agents as have been duly appointed and notified to him (*ib.* rr. 52, 32).

Hours of  
counting.

The returning officer shall count the votes (B.A. s. 2) as soon as practicable after the close of the poll (B.A. r. 32); and shall, so far as practicable, proceed continuously

therewith, allowing only time for refreshment, and excluding, except so far as he and the candidates' counting agents otherwise agree, the hours between 7 P.M. and 9 A.M. on the succeeding morning (B.A. r. 35); and thus, as the poll does not close until 8 P.M. (48 Vict. c. 10, s. 1; L.G.A. s. 75, sub. 11), the returning officer cannot, unless all the agents, present at the counting, consent, commence or proceed with the counting until the morning after the close of the poll. Such consent may be verbal, and, if once given and acted upon by the returning officer, cannot, it is apprehended, be withdrawn without his assent. There seems to be no legal objection to counting the votes on a Sunday, but the returning officer is not bound to do so, but may delay the proceedings until the Monday (see B.A. r. 56; M.C.A. s. 230, sub. 2).

During the excluded time the returning officer shall place the ballot papers, and other documents relating to the election, under his own seal, and the seals of such of the agents of the candidates as desire to affix their seals, and shall otherwise take proper precautions for the security of such papers and documents (B.A. r. 35).

The returning officer shall, in the presence of such agents, if any, of the candidates, as may be in attendance (B.A. r. 55), open the ballot boxes, and ascertain the result of the poll by counting the votes given to each candidate (B.A. s. 2, and r. 32). The returning officer may refuse to admit to the place where the votes are counted any candidate's agent whose name and address was not transmitted to him one clear day at the least before the opening of the poll (*ib.* r. 52). He should refuse to admit any agent who has not taken the declaration of secrecy (*ib.* r. 54), and he should, therefore, inform himself as to who have or have not taken such declaration. He is bound to admit the candidates (*ib.* r. 51; *Clementson v. Mason*, L. R. 10 C. P. 209), all agents duly appointed by the candidates, and duly notified to him (B.A. s. 2, rr. 33, 52), and he, of course, admits his own assistants and clerks, but no other person, except with his (the returning officer's) sanction, may be

Proceedings  
at counting  
Who may be  
present.

CHAP. XV. present (*ib.* r. 33). This sanction obviously should not be given to any person other than those entitled to be, or necessarily, present. The returning officer need not wait for any candidate's agent who does not attend (see B.A. r. 55). The returning officer, and every clerk or agent so attending must have taken the declaration of secrecy before the opening of the poll (*ib.* r. 54), in the manner pointed out, *ante*, p. 61.

Recording,  
mixing, and  
counting the  
ballot papers.

The returning officer shall (first) open each ballot box, and, taking out *the papers* therein, shall count and record the number thereof (B.A. r. 34). He shall (secondly) then mix together the whole of the ballot papers contained in the ballot boxes (B.A. r. 34). He shall (thirdly) count *the votes* (*ib.*). For these purposes it is necessary that the folded ballot papers should be opened in order to expose their faces, and in opening them it is impossible to avoid seeing their backs, and it is the duty of the returning officer (a duty which the candidates and their counting agents are entitled to supervise) to examine both sides of the ballot papers (*Thornbury*, 16 Q. B. D. 751); but the returning officer, while thus counting and recording the number of *ballot papers*, and counting the *votes*, shall keep the ballot papers with their faces upwards, and take all proper precautions for preventing any person from seeing the numbers printed on the backs of such papers (B.A. r. 34). Although the candidates and their counting agents have thus a right to see the backs as well as the fronts of the papers, they have no right to look at the numbers on those backs, and the returning officer and his counting assistants may prevent it; they need not let the papers out of their hands, and may double up the numbers (*Thornbury*, 2 T. L. R. 488), a course which was substantially taken by Denman, J. in chambers when re-counting the votes in the *Ashton-under-Lyne* petition, 1885.

Again, although the candidates' counting agents are entitled to be present while the returning officer is counting and recording the number of *ballot papers* taken from each ballot box, they are not entitled to count or

record the number of *votes* given for any particular candidate in any particular polling districts or in any particular ballot box ; and the returning officer should take all possible means to prevent this, or any other improper exercise of their right of supervision and of being present.

Throughout the counting, the returning officer must take all necessary precautions and steps to insure secrecy. Every officer, clerk, and agent in attendance at the counting of the votes shall maintain, and aid in maintaining, the secrecy of the voting, and shall not attempt to ascertain at such counting the number on the back of any ballot paper, or communicate any information obtained at such counting as to the candidate for whom any vote is given in any particular ballot paper, under penalty of not exceeding six months' imprisonment, with or without hard labour (B.A. s. 4). Precautions as to secrecy.

Any question arising in respect of any ballot paper is decided by the returning officer, and his decision is upon a question of fact, and is final, but subject to reversal on election petition (B.A. s. 2 ; *Woodward v. Sarsons*, L. R. 10 C. P. 748). His function is judicial, so far as regards any inquiry into the validity of voting papers *as papers*, and to see whether they comply with the statute, or whether there is any objection to them ; but, beyond this, his only function is to count the votes and to declare the result of that counting (*Pritchard v. Mayor, etc., of Bangor*, 13 App. Cas. 241). His jurisdiction to decide such questions appears to be personal, and neither he nor his deputy can, it is submitted, delegate this jurisdiction to any one else. Jurisdiction of returning officer.

In dealing with any question which he is empowered to deal with in respect of any ballot paper, the returning officer should remember that it is not every departure from the regulations of the B.A. that will render the vote invalid ; and that while, on the one hand, the enactments contained in the body of the Act are absolute, and must be obeyed by the voter *exactly*, yet that, on the other hand, the rules and forms in the schedule are directory merely, and it is sufficient if they Construction of B.A.

CHAP. XV. be obeyed *substantially* (*Woodward v. Sarsons*, L. R. 10 C. P. 746; *acc. Phillips v. Goff*, 17 Q. B. D. 812). He should also bear in mind that statutory provisions in general are directory where the thing to be done is to be done by an officer, but are mandatory where it is to be done by the voter (*Thornbury*, 2 T. L. R. 485).

Mandatory enactments.

Keeping these principles in mind, it will be found that the following are absolute enactments which must be obeyed exactly, and a breach of which will render the vote void:—the voter shall mark his ballot paper secretly (*Woodward v. Sarsons*, L. R. 10 C. P. 747); the ballot paper shall be marked on the back with the official mark (*Thornbury*, 16 Q. B. D. 739); the ballot paper shall not be so filled up or marked as that the voter can be identified (*Wigtown*, 2 O'M. & H. 216; *Woodward v. Sarsons*, L. R. 10 C. P. 747), as if, for example, the voter marks the face of the ballot paper with his name or initials (*Woodward v. Sarsons*, L. R. 10 C. P. 749, 750), or if the presiding officer marks such face with the voter's register number (*ib.* 748: *sed qu. Thornbury*, 2 T. L. R. 485, and see *post*, p. 145).

Directory enactments.

But the *manner* in which the voter shall secretly mark his ballot paper is regulated by the rules and forms contained in the schedule to the B.A., and, as these are directory merely, it is sufficient if they be obeyed substantially (*Woodward v. Sarsons*, L. R. 10 C. P. 747; *acc. Phillips v. Goff*, 17 Q. B. D. 812). There is therefore no objection to making the mark with ink instead of with a pencil, provided it be not a peculiar ink (*Wigtown*, 2 O'M. & H. 223); or with a blunt knife, piece of wood, or finger nail (*Berwick-on-Tweed*, 3 *ib.* 180). The *form of the mark* is also, in the absence of evidence of collusion or pre-arrangement, immaterial (see the instances of good and bad ballot papers, *post*, p. 145). And, when the matter is one over which the voter has no control, the vote is not to be considered bad by reason of an omission or error by an officer (*Thornbury*, 16 Q. B. D. 746); thus the wrapping up of the votes of illiterate voters, each in the corresponding declaration of inability to read, and then placing the two



together in the ballot box, will not render the votes void (*Woodward v. Sarsons*, L. R. 10 C. P. 748) ; nor will the insertion of the same candidate's name twice in the ballot paper, the one being in respect of a valid nomination and the other in respect of an invalid nomination, render either set of votes void (*Northcote v. Pulsford*, *ib.* 483). The omission of the presiding officer to indorse the voter's name upon a tendered ballot paper (*Stepney*, 4 O'M. & H. 43), or to stamp the *face* of the ballot paper with the official mark, does not invalidate the votes (*Thornbury*, 16 Q. B. D. 746) ; but the omission to insert in the counterfoil the voter's register number may perhaps render the vote void (*Pickering v. Startin*, 28 L. T. 111).

CHAP. XV.

The returning officer shall reject, and shall not count any ballot paper :—

Ballot papers which *shall* be rejected.

1. Which has not on its back the official mark (B.A. s. 2 ; see *infra*).
2. On which votes are given to more candidates than the voter is entitled to vote for (*ib.* ; see *post*, p. 144).
3. On which anything, except the printed number on the back, is written or marked by which the voter can be identified (*ib.* ; see *post*, p. 144).

He is also bound to reject any ballot paper :—

4. Which is not marked (B.A. r. 36 ; see *post*, p. 146).

Apparently he is also bound to reject any ballot paper :—

5. Which is void for uncertainty (*ib.* ; see *post*, p. 146).

With regard to the first of these classes, the presiding officers and their poll clerks can be alone to blame for the absence of the official mark on any ballot paper, and if competent persons are appointed to these posts, and if they do their duty, no ballot paper ought to be subject to the returning officer's rejection upon this ground. If there is no official mark whatever, the ballot paper must be rejected (*Wigtown*, 2 O'M. & H. 216) ; but, if the official mark appears on the back of the ballot paper, its absence from the face of the paper does not render the vote void (*Thornbury*, 16 Q. B. D. 746).

1. Want of official mark.



## CHAP. XV.

2. Voting for more candidates than entitled to.

With regard to the second of the above classes, it occasionally happens that a voter makes a mistake in marking his votes, and, instead of obtaining another ballot paper, seeks by some means to obliterate his error, and afterwards marks his votes correctly. In any such case the returning officer must decide whether the additional marks are mere cancellations of errors which in his judgment do not invalidate the votes, or whether they are such marks as would lead to the identification of the voter, and therefore invalidate the ballot paper under the next head. See the facsimile copies of the ballot papers in *Woodward v. Sarsons*, numbered 1,632, 1,726, and 926, in Election Agent, pp. 186, 187, 190.

3. Writing or mark by which voter can be identified.

In dealing with the third of the above classes, viz., ballot papers upon which anything, except the number on the back, is written or marked by which the voter *can* be identified, the returning officer must form the best judgment he can upon the materials before him, and, if in his judgment the mark or marks do not amount to marks by which the voter *can* be identified, the ballot paper is valid and the votes appearing thereon must be counted. The returning officer is not bound to call for evidence, nor to hold an inquiry for establishing the voter's identification, or for the purpose of showing that the voter had, by previous concert with others, intended to make it known for whom he voted (*Wigtown*, 2 O'M. & H. 225) ; but, on the other hand, he may, and apparently ought, to receive any evidence that is tendered to him to show that a peculiar mode of marking was resorted to by pre-arrangement or collusion to indicate that the paper so marked was the one used by a particular voter, or for any other improper identification (*Woodward v. Sarsons*, L. R. 10 C. P. 749). For example, it is conceivable that a bribe might be promised to (say) twelve voters to vote for A. B., conditional on their marking their ballot papers with a peculiar mark, or with a mark in a peculiar position, or made with a peculiar pencil or instrument, such bribe to be paid after the counting agents for A. B. should have noticed that twelve ballot papers are marked for A. B.

in the stipulated manner ; and if at the counting of the votes the returning officer is of opinion that the recurrence of a series of similar peculiar marks is in itself evidence of such a pre-arrangement, or if distinct evidence thereof is adduced, he is entitled, and seemingly bound, to reject the votes (see *Woodward v. Sarsons*, L. R. 10 C. P. 749) ; though if he is of opinion that the irregularity or peculiarity is innocent, or the result of ignorance, or inadvertence, he should allow the votes, and leave the party attacking the votes to seek his remedy by election petition. The register number of the voter, being a mark by which, on reference to the register, the voter can be identified, the court in one case rejected 294 ballot papers because they were marked upon their faces by the presiding officer with such numbers (*Woodward v. Sarsons*, L. R. 10 C. P. 748, 735) ; but in a subsequent case it was held that the voter is not to lose his vote for any act or default of an officer, in a matter in which he (the voter) has no control (*Thornbury*, 2 T. L. R., 485, 490). From the latter decision it would appear that the mark creating the identity must, to render the vote void, be made by the voter himself, and not by an officer, and that thus the former decision is no longer law.

It has been held that ballot papers marked as follows are all bad, and ought to be rejected by the returning officer : viz. marked with the name of the candidate voted for (*Woodward v. Sarsons*, L. R. 10 C. P. 748) ; the name of the voter (*ib.* 749) ; the name of any third party (*Wigtown*, 2 O'M. & H. 216, but see *Stepney*, 4 *ib.* 60) ; initials in addition to a cross (*Woodward v. Sarsons*, L. R. 10 C. P. 750) ; a circle instead of a cross (*Stepney*, 4 O'M. & H. 37 ; *Wigtown*, 2 *ib.* 221 ; *contra* *Buckrose*, Decr. 1886—the latter decision appears to be more correct than the two former).

And it has been held that ballot papers marked as follows are good, and ought to be allowed by the returning officer : viz. two or three crosses instead of one cross (*Woodward v. Sarsons*, L. R. 10 C. P. 749, dissenting from *Wigtown*, 2 O'M. & H. 218) ; a mark

Ballot papers  
held to be  
bad.

Ballot papers  
held to be  
good.

CHAP. XV. like an imperfect letter P., in addition to a cross ; a star instead of a cross ; a peculiarly formed cross (*Woodward v. Sarsons*, L. R. 10 C. P. 749) ; a line drawn through the name of the candidate not voted for, and a cross marked against the name of the other candidate (*ib.* 748) ; a figure instead of a cross (*Phillips v. Goff*, 17 Q. B. D. 805) ; a cross or stroke or strokes on the back in addition to the cross on the face of the ballot paper (*Stepney*, 4 O'M. & H. 39 ; but see *Wigtown*, 2 O'M. & H. 219). Facsimile copies of the ballot papers considered in the above decided cases are given in the Election Agent, p. 182, *et seq.*

4. Unmarked  
ballot papers.

With regard to the fourth of the above classes, the unmarked ballot papers, of course, present no difficulty. Few will, however, be found to be wholly unmarked, and it must be remembered that a ballot paper may be well marked, although it is not marked with the pencil provided for the purpose (see *ante*, p. 142). Some ballot papers that appear at first sight to be unmarked will probably be found to be marked on the back ; but in inspecting the backs all proper precautions for preventing any person from seeing the numbers printed thereon must be taken by the returning officer (B.A. r. 34), *e.g.* the number should be doubled up (*Thornbury*, 2 T. L. R. 488). A ballot paper marked on the back *only* should be rejected (*Berwick-on-Tweed*, 3 O'M. & H. 182) ; but a ballot paper marked on the back, if well marked on the face, and unless bad under the third class (*ante*, p. 144), should be counted (*Stepney*, 4 O'M. & H. 39 ; but see *Wigtown*, 2 *ib.* 219).

5. Void for  
uncertainty.

With regard to the fifth and last of the above classes, viz. ballot papers void for uncertainty, where the mark is so placed as to render it impossible to decide for whom the vote was intended to be given, the ballot paper must be rejected (*Phillips v. Goff*, 17 Q. B. D. 815). If the cross be marked at the top corner of the paper, outside the parallelogram containing the candidate's name, and outside the space for the cross, the ballot paper is bad for uncertainty (*Berwick-on-Tweed*, 3 O'M. & H. 182 ; *Stepney*, 4 *ib.* 37). So, also, if there is a

good separate mark against the name of each candidate, the ballot paper is clearly void for uncertainty. But where the voter marked a long cross, each line thereof being partly in the square allotted to one candidate, and partly in that of the other, the ballot paper was allowed as a good vote for the candidate in whose square the intersection of the cross appeared (*Berwick-on-Tweed*, 3 O'M. & H. 182). A ballot paper which is certain as to one vote may be counted as to that vote, though it is uncertain as to another vote (see *ib.*).

Upon the back of every ballot paper which the returning officer may reject as invalid (*Thornbury*, 16 Q. B. D. 751), he shall, indorse "rejected," and shall add to the indorsement "rejection objected to," if an objection be in fact made by any agent to his decision (B.A. r. 36).

Indorsement  
on rejected  
ballot paper.

The returning officer may adjourn the proceedings for the purpose of finishing the counting (*R. v. Mayor, &c., of Bangor*, 18 Q. B. D. 363); but not, it would seem, for the purpose of considering, or taking advice on any question that comes before him (*ib.* 363, 354; *Pritchard v. Mayor, &c., of Bangor*, 13 App. Cas. 250).

Adjournment  
of counting.

Where the returning officer thinks that there has been an error in the counting, he can recount the votes before he declares the result (*R. v. Mayor, &c., of Bangor*, 18 Q. B. D. 354; and see *Stepney*, 2 T. L. R. 571.) But if, after he has declared the result, the counting is still erroneous, the mistake can only be rectified by filing an election petition praying a re-count (*Renfrew*, 2 O'M. & H. 213; *Ashton-under-Lyne*, 1885, and see *Dublin*, 1 P. R. & D. 193); and if at the termination of a scrutiny the votes are equal in number, the election is a void election (*Downton*, 1 Lud. 264). When the seat is claimed on election petition, the respondent may claim a re-count (*Stepney*, 4 O'M. & H. 35, 49).

Votes wrongly  
cast up.

Where an electoral division of a county is co-extensive with, or wholly comprised in, a borough, and the returning officer for the borough acts as the returning officer in pursuance of a writ directed to him from the county returning officer (as to which, see *ante*, p. 56), the former shall follow the instructions of the latter, in like manner

Reviewing  
decision of  
borough  
returning  
officer.

CHAP. XV. as if he were a deputy returning officer, and any decision of an objection to a ballot paper shall be subject to revision by the county returning officer *accordingly* (L.G.A. s. 75, sub. 6). No procedure is prescribed for obtaining this revision, nor is any explanation given of what is implied by this word "accordingly," and there is no other provision enabling any decision of any ordinary deputy returning officer to be reviewed, which can be referred to for explanation or comparison. But upon the decision of the borough returning officer being challenged, the best course for him to take seems to be to adjourn the proceedings until the result of the revision by the county returning officer can be obtained, and can be communicated to him (the borough returning officer). The borough returning officer shall return the names of the persons elected to the county returning officer (*ib.*), and as the revision of any decision of the former by the latter may affect the result of the counting, and may alter the names of the persons to be returned, it seems necessary that this revision of his decision should be heard and determined before the declaration of the result of the counting is made (as to which, see *post*, p. 149), and before the names of the persons elected are returned to the county returning officer.

Casting vote. Where an equality of votes is found to exist between any candidates, and the addition of a vote would entitle any of those candidates to be declared elected, the returning officer or his deputy, whether entitled or not to vote in the first instance, may give such additional vote by word of mouth or in writing (M.C.A. s. 58, sub. 5). The returning officer is not, nor is his deputy, bound to give a casting vote; but unless the circumstances are very unusual or special, he ought to exercise his power and give a casting vote, as otherwise he leaves the candidates to seek their remedy by election petition.

Sealing up  
the packets.

Upon completion of the counting, the returning officer shall seal up in separate packets the counted and rejected ballot papers (B. A. r. 37). He shall not open the sealed packets of tendered ballot papers, or those of the registers of voters and counterfoils (*ib.*). He must open the sealed



packets containing the unused and spoiled ballot papers, and also the packets containing the tendered votes lists, for he shall, in the presence of such agents of the candidates (B.A. r. 37) as are authorised to attend (B.A. rr. 31, 52), and do attend (B.A. r. 55), proceed to verify the ballot paper account given by each presiding officer, by comparing it with the number of ballot papers recorded by him (the returning officer) as aforesaid, and the unused and spoilt ballot papers in his possession, and the tendered votes list (B.A. r. 37). He shall then re-seal each sealed packet so opened for examination by him (*ib.*). He shall report to the clerk of the county council the result of such verification, and shall, on request, allow any agents of the candidates, before such report is sent, to copy it (*ib.*; L.G.A. s. 75, sub. 5); for a form of this report, see Election Agent, p. 530.

CHAP. XV.

Verification of  
ballot paper  
accounts.Report there-  
on to clerk of  
the county  
council.

Having ascertained the result of the poll by counting the votes given to each candidate, the returning officer shall forthwith declare to be elected the candidate or candidate to whom the majority of votes has been given (B.A. s. 2). This declaration is usually publicly made, outside the hall or place in which the votes are counted, immediately after the result has been ascertained; and there seems to be no legal objection to making it on a Sunday. It is to be made "forthwith," and therefore must not be postponed until the next day, or delayed for any reason whatever (*Pritchard v. Mayor, &c., of Bangor*, 13 App. Cas. 250, 258).

Declaration of  
result.

If the candidate elected be alleged to be disqualified, the returning officer should nevertheless return him, and should leave the objector, or the candidate next in order to the candidate alleged to be disqualified, to seek his remedy by election petition, or otherwise as he may be advised. The functions of the returning officer at the counting of the votes, after all questions as to the validity of the voting papers as voting papers have been disposed of, are purely ministerial, and he has no jurisdiction to enter into an enquiry as to the qualification or disqualification of any candidate (per Lord Halsbury, L.C. in *Pritchard v. Mayor, &c., of Bangor*, 13 App. Cas. 249,

Where candi-  
date alleged  
to be dis-  
qualified.



CHAP. XV. 250); he has simply to count the votes, and to declare the result of that counting of the votes (*ib.* 250; and see S.C. in C.A. 18 Q.B.D. 363).

Neglect or refusal to declare election.

If the returning officer, or his deputy, neglects or refuses to declare the election as required by the M.C.A. he shall for every such offence be liable to a fine not exceeding £100, recoverable by action (M.C.A. s. 75, sub. 1). Such action must be brought within three months from the neglect or refusal, and after payment of the costs of the action, including extra costs (see *Mayor of Harwich v. Gant*, 5 E. & B. 182), a moiety of the fine shall be paid to the plaintiff (M.C.A. s. 75, sub. 3, and see L.G.A. s. 75, sub. 16, *a*). The other moiety under the M.C.A. goes to the borough fund (M.C.A. s. 140), but this section is not applied to the L.G.A. (see L.G.A. s. 75), and the destination of this other moiety is therefore not provided for, and thus the whole fine may belong to the plaintiff.

Return to clerk of the county council.  
Summons to attend first meeting of provisional council.  
Election for more than one electoral division.

The returning officer must forthwith return the names of the persons elected to the clerk of the county council, as mentioned, *ante*, p. 108; and, after the first election, must send to each person elected, notice of his election, accompanied by a summons to attend the first meeting of the provisional council, as mentioned, *ante*, p. 109. If a person is elected a county councillor for more than one electoral division, the choice of the person elected, or, in default, the determination of the returning officer as to the division for which he will serve, must be made as mentioned, *ante*, p. 108.

Notice of candidates elected.

The returning officer shall also, as soon as possible, give public notice of the names of the candidates elected, and of the total number of votes given for each candidate, whether elected or not (B.A. r. 45), by advertisements, placards, handbills, or such other means as he thinks best calculated to afford information to the electors (B.A. r. 46); for a form see No. 13, *post*, p. 244. If this notice is given by placards, handbills, or posters, they must bear upon their faces the name and address of the printer and publisher, under a penalty of £100 (M.E.C.I.P.A. s. 14).

The returning officer shall report to the clerk of the county council the number of ballot papers rejected and not counted by him under the several heads of:—

CHAP. XV.  
Report to the clerk of the county council.

1. Want of official mark ;
2. Voting for more candidates than entitled to ;
3. Writing or mark by which the voter can be identified ;
4. Unmarked or void for uncertainty ;

and shall, on request, allow any agents of the candidates, before such report is sent, to copy it (B.A. rr. 36, 64 ; L.G.A. s. 75, sub. 5). For a form of this report, see Election Agent, p. 530.

The returning officer shall deliver to the clerk of the county council (B.A. r. 64, b ; L.G.A. s. 75 sub. 5) :—

Delivery of ballot papers, packets, etc.

1. The counted ballot papers, made up into a packet and sealed by him (B.A. rr. 38, 37) ;
2. The rejected ballot papers, made up into a packet and sealed by him (*ib.*) ;
3. The returning officer's report as to rejected ballot papers (B.A. r. 36, *supra*), and as to the result of his verification of the presiding officer's ballot paper accounts (*ib.* r. 37, *ante*, p. 149), made up into a packet and sealed by the returning officer (*ib.* r. 38) ;
4. The ballot paper accounts of the several presiding officers (B.A. r. 30), made up into a packet and sealed by the returning officer (*ib.* r. 38) ;
5. The several packets of unused and spoiled ballot papers, sealed up by, and received from, the several presiding officers (B.A. r. 29), opened by the returning officer (*ib.* r. 37), and made up into one packet and sealed by the returning officer (*ib.* r. 38) ;
6. The several packets of tendered ballot papers used, sealed up by, and received from, the several presiding officers (B.A. r. 29), and made up into one packet and sealed by the returning officer (*ib.* r. 38) ;
7. The marked copies of the registers and the counterfoils of the ballot papers, sealed up by, and

## CHAP. XV.

received from, the several presiding officers, (B.A. r. 29), and made up into one packet and sealed by the returning officer (*ib.* r. 38) ;

8. The tendered votes lists, the lists of votes marked by the several presiding officers, the statements of the numbers of voters whose votes are so marked, and the declarations of inability to read, sealed up by, and received from, the several presiding officers (B.A. r. 29), opened by the returning officer (*ib.* r. 37), and made up into one packet and sealed by the returning officer (*ib.* r. 38).

The returning officer shall indorse on each packet a description of its contents, the date of the election to which it relates, and the name of the electoral division for which the election was held (B.A. r. 38).

Custody and  
destruction.

The clerk of the county council shall keep among the records of the county for a year all the ballot papers and other documents delivered to him by the returning officer, and then, unless otherwise directed by an order of the county court having jurisdiction in the county, or any part thereof, or of any tribunal in which the election is questioned, shall cause them to be destroyed (B.A. rr. 39, 64 ; L.G.A. s. 75, sub. 5). Subject as aforesaid, the clerk of the county council, in respect of the custody and destruction of the ballot papers and other documents, shall be subject to the directions of the county council (B.A. r. 64 b (*b*) ; L.G.A. s. 75, sub. 5).

## Inspection.

Until so destroyed these documents are, with certain exceptions, open to inspection (B.A. rr. 64, 42, 40, 41).

## CHAPTER XVI.

CHAP. XVI.

## ELECTION EXPENSES AND RETURN.

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THE M.E.C.I.P.A. is applied to local government elections by L.G.A. s. 75.

The provisions discussed in this chapter are very analogous to those affecting election expenses at parlia-

## CHAP. XVI.

Distinction  
between  
election ex-  
penses at  
parliamentary  
and at local  
government  
elections.

mentary elections. But there is no election agent (as in C.I.P.P.A. s. 24), no provision for a candidate's personal expenses (as in *ib.* s. 31), or for miscellaneous matters (as in *ib.* sch. I. pt. III.), or for petty expenses for stationery, etc. (as in *ib.* pt. II. and s. 31, sub. 3), or for the taxation of disputed claims (as in *ib.* s. 30). And the prohibition against incurring expenses extends to all elections, while the permission to incur expense, not exceeding a certain maximum allowance, is confined to a candidate for election as a county councillor (M.E.C.I.P.A. s. 5, sub. 1). The Act does not authorise or contemplate the incurring of expenses in respect of the election of a county alderman or chairman of the county council, and doubtless for the reason that no expenses can properly be incurred by a candidate for election to either of those offices.

## I. EXPENSES, HOW INCURRED.

Definition of  
election  
expense.

An election expense is one "incurred by or on behalf of a candidate at a county councillor's election, on account of, or in respect of the conduct or management of such election" (M.E.C.I.P.A. s. 5, sub. 1). These words are used throughout the Act when dealing with legal expenses, wider words ("for the purpose of promoting or procuring the election of a candidate," *ib.* s. 12, sub. 1) being used in relation to illegal expenditure. It would seem that the phrase "on account of or in respect of the conduct or management of the election," is to be read "on account of the election, or in respect of the conduct or management of the election" (*Kennington*, 4 O'M. & H. 94); and that an expense incurred for "promoting or procuring" an election is also an expense incurred "on account of or in respect of the conduct or management of the election" (*Ipswich*, 31st Mch. 1886).

It is a question of fact in each case as to when a person has become a "candidate," as to when an "election" has commenced, as to when "the conduct or management of the election" has commenced, and as to whether any particular expense has been "incurred on

account of or in respect of the conduct or management of the election." Every expense must be judged with reference to its particular facts and surrounding circumstances, but, as a general rule, expenses incurred in ordinary course:—(1), before the election has commenced; (2), after the election has terminated; (3), with reference to elections generally, or in the general interest of a political party, and not in respect of a particular election; (4), by a candidate's family or friends out of mere curiosity, interest, or sympathy, and not incidental to the conduct or management of his election; and (5), in respect of public charities or institutions, having no reference to the election—are not election expenses, and need not, in the absence of special circumstances, be returned or taken into account in calculating the maximum. Of these in their order.

It has been suggested that until there is a candidate there cannot be an election, and that consequently until a particular candidate has definitely come before the constituency expenses *bonâ fide* incurred are not election expenses (see *Norwich*, 4 O'M. & H. 85, 86). But these propositions cannot be accepted as universally true. If one candidate retires in favour of another candidate, and the latter adopts and succeeds to the preparations for election which the former has made, the expense thereof must, it is submitted, be treated as part of the election expenses of the latter, and be taken into account and returned as such. So, also, if the candidate does not come forward until the eve of the polling day and after all the preparations for the election have been completed. The proper course in such cases would seem to be to consider that if steps are taken such as usually belong to the conduct of a contest, with a view to promote the return or interest of a particular individual, and at a time when voters have the immediate prospect of voting, then the election has commenced, and if that particular person does afterwards become a candidate, then that he must treat those expenses as election expenses, and must include them in his election return. Again, if work costing money, valuable consideration, security, or other

1. Expenses incurred before election has commenced.



CHAP. XVI. equivalent for money (see C.I.P.P.A. s. 64 ; M.E.C.I.P.A. s. 34) has been done prior to the commencement of the election contest, which work the candidate adopts, and takes the benefit of, for the then pending election, the only prudent course is for him to treat such work as an election expense, or to repay the money so expended, and to debit it in his accounts. If the cost of the work so adopted includes that of other work which the candidate does not adopt, he should apportion the expense as best he can ; and where he cannot otherwise arrive at the precise amount, a safe course is to estimate the amount it would cost him to have the adopted work done over again. Thus, if he accepts canvass books prepared beforehand by a registration or political association, or information collected by any paid officer of such an association, wherewith he compiles his own canvass books, he should estimate the actual cost incurred in, or saved to himself by, providing and compiling such books, or collecting such information, and should repay the amount to such association or officer. Any doubtful question, the candidate should solve by paying the amount and including it in his return.

Instances of  
preliminary  
expenses  
which are not  
election ex-

Certain preliminary expenses have been considered by the election judges, and have been held not to be election expenses. Thus, registration expenses are not election expenses (*Penryn*, 1 O'M. & H. 131 ; *Kennington*, 4 *ib.* 94), unless the registration is so conducted as to amount to a canvass for a particular candidate. In any case a prudent candidate will not subscribe to registration expenses more than a reasonable amount, and then only on condition that his money is not spent for any other purpose, that a careful account is kept, and that proper vouchers are taken and preserved. What is a reasonable amount is a question of degree to be determined with reference to the circumstances of each case ; but for an intending candidate to pay the whole, or nearly the whole, of the registration expenses is imprudent, and may expose him to having his seat attacked (as in *Kennington*, 4 O'M. & H. 93). The expense of getting up a requisition to a person to stand for election,

of employing people to obtain signatures to such requisition, of a public meeting at which such requisition is presented, of men employed as stewards and to keep order at such meeting, and of refreshment given to such stewards, are not election expenses if *bonâ fide* incurred, and if the person to whom the requisition is addressed be not in fact a candidate at the time, for the expense of procuring a candidate or of inducing a person to become a candidate, is not an expense of his election (*Norwich*, 4 O'M. & H. 85, 86). But if such expenses be incurred colourably to evade the Act, they may be held to be election expenses (*ib.*).

The expenses of a newspaper started months before an election to favour the views of a particular party, which advocates the claim of a particular candidate, and which ceases to appear shortly after the election is over, has also been held not to be an election expense (*Kennington*, 4 O'M. & H. 93). The expense of a test ballot held after the vacancy has arisen, or writ of election has issued, to determine which of three candidates shall go to the poll, is an election expense (see *Britt v. Robinson*, L.R. 5 C.P. 508); but the expense of a test ballot held before the vacancy has arisen, and before the writ of election has issued, for the purpose of selecting a candidate to be invited, and who has not yet offered himself or consented to stand, is not, it would seem, an election expense (see *Norwich*, 4 O'M. & H. 84; *Kennington*, *ib.* 93).

It is submitted that the "conduct or management of the election" is at an end as soon as the declaration of the poll has been made (see *Galway County*, 2 O'M. & H. 49), and that consequently the following are expenses which need not be taken into account in calculating the maximum, or returned as election expenses:—telegrams announcing the result of the poll, advertisements or circulars of thanks to the electors, fees to counsel to advise and settle the election return and declaration, journeys to London for the like purpose, and to the returning officer's office to inspect the accounts and vouchers, costs of taxing the returning officer's account. The expense of a journey to pay the accounts of a

CHAP. XVI. particular election was formerly held to be an election expense (*Grant v. Guinness*, 17 Scott, 190); but this was under one of the old statutes, now repealed, which contained no such words as the present statute. Until, however, some judicial decision has been given on this class of expenses, it would be prudent, where practicable, to treat these expenses as election expenses and to return them accordingly (see *Peuryn*, 1 O'M. & H. 131).

3. Expenses incurred with reference to elections generally.

Expenses incurred with reference to elections generally, or in the general interests of a political party, are not expenses "on account of or in respect of the conduct or management of" a particular election. Thus, although the expenses of meetings held in view of an impending vacancy, or after the vacancy, dissolution or nomination, are, generally speaking, election expenses, the expense of meetings held to enable a member to address his constituents, to select a candidate, or to further the interests of a political party, are not, as a rule, election expenses and need not be returned. Expenses *bonâ fide* incurred by a political association to promote particular political views, and without reference to the election of any particular individual, and the expense of taking an opinion as to the sufficiency of a candidate's qualification, and not solely applicable to a then approaching election, are also not election expenses (*Grant v. Guinness*, 17 Scott, 190).

4. Expenses incurred by candidate's friends out of mere curiosity, &c.

Expenses incurred by a candidate's family or friends out of mere curiosity, interest or sympathy, and not affecting the "conduct or management" of his election, have been considered by an experienced lawyer not to be election expenses; e.g. the hotel or other expenses of a candidate's wife or relatives who accompany him about the constituency during his candidature or on the poll day, who attend meetings and perhaps even speak on his behalf, and generally act as mere spectators interested in the election. But until this view has received judicial sanction it would be more prudent, where practicable, to treat these expenses also as election expenses and to return them accordingly.

5. Subscriptions, etc., to

Subscriptions or donations *bonâ fide* made to or for public charities, institutions, or purposes, were formerly

expressly declared not to be election expenses (see 17 CHAP. XVI. & 18 Vict. c. 102, s. 24, and *Grant v. Guinness*, 17 Scott, 190) and are not so now (Rog. 711). As to the danger of incurring such expenses during an election, see Election Agent, pp. 291, 292.

All election expenses incurred or paid must be for a reasonable and proper sum, and in no sense "colourable" or excessive, or they may amount to bribery.

Subject to such exception as may be allowed in pursuance of the Act (as to which, see *post*, p. 202), no election expense shall be paid or incurred by or on behalf of a candidate at an election, whether before, during, or after an election, in excess of the maximum amount specified, under penalty, if knowingly exceeded, of an illegal practice (M.E.C.I.P.A. s. 5, subs. 1, 2), avoiding the election (*ib.* s. 8). And if a person knowingly provides money for any payment which is contrary to the provisions of the M.E.C.I.P.A., or for any expenses incurred in excess of the maximum, or for replacing any money expended in any such payment, except where previously allowed by the court to be an exception, such person shall be guilty of illegal payment (*ib.* s. 9).

This maximum amount is as follows ; the sum of £25, and if the number of electors in the electoral division exceeds 500, an additional amount of three pence for each elector above the first 500 electors (M.E.C.I.P.A. s. 5, sub. 1). Inasmuch as these numbers are taken according to the enumeration of the electors in the register (*ib.* s. 34), no deduction need be made for dead persons, double entries, removals, or the like.

In case of a joint candidature, the maximum amount shall, for each of such joint candidates, be reduced by one-fourth, or, if there are more than two joint candidates, by one-third (M.E.C.I.P.A. s. 5, sub. 3). In other words, two joint candidates may spend one-and-a-half times, and three joint candidates twice, the maximum for a single candidate.

A joint candidature is, for the purposes of calculating the maximum amount of expenditure, created when two or more candidates by themselves or any agent or agents :—

## CHAP. XVI.

—

1. Hire or use the same committee rooms ;
2. Employ or use the services of the same clerks, messengers, or polling agent ;
3. Publish a joint address, or joint circular, or notice. But the employment and use of the same committee room, clerk, messenger, or polling agent, if (*a*) accidental or casual, or (*b*) of a trivial or unimportant character, shall not be deemed of itself to constitute persons joint candidates (M.E.C.I.P.A. s. 5, sub. 4 ; and see further hereon, Election Agent, p. 221).

Legal ex-  
penses.

The following are legal expenses, and may be incurred within the maximum limit :—

1. The remuneration of the candidate's agents, if any (see *ante*, p. 48).
2. The remuneration of the polling agents (see *ante*, p. 50).
3. The remuneration of the clerks and messengers (see *ante*, p. 50).
4. The expenses of printing and advertising (see *ante*, p. 81).
5. The expenses of publishing, issuing, and distributing addresses and notices (see *ante*, p. 82 *et seq.*).
6. The expenses of exhibiting addresses, bills, notices, etc., by non-electors, or by electors being advertising agents (see *ante*, p. 82).
7. The expenses of holding election meetings (see *ante*, p. 86).
8. The expenses of committee rooms (see *ante*, p. 77).

Illegal  
Expenses.

The following are illegal expenses and are absolutely prohibited :—

1. The conveyance of electors to or from the poll (see *ante*, p. 119).
2. Payments to corruptly induce or procure a person to withdraw from being a candidate at an election (M.E.C.I.P.A. s. 11).
3. The expense of bands of music, torches, flags, banners, cockades, ribbons, or other marks of distinction (see *ante*, p. 87).
4. The expense of committee rooms in prohibited places, etc. (see *ante*, p. 78).



5. Expenses incurred contrary to the provisions of the Act, or beyond any maximum amount allowed, and money knowingly provided for the payment thereof, or to replace any money so expended (see *ante*, p. 159). CHAP. XVI.

6. Payments to electors, not being advertising agents, for exhibiting addresses, bills, or notices (see *ante*, p. 82).

The provisions of the M.E.C.I.P.A., prohibiting certain payments and contracts for payments, and the payment of any sum, and the incurring of any expense, in excess of a certain maximum, do not affect the right of any creditor who, when the contract was made, or the expense was incurred, was ignorant of the same being in contravention of the Act (M.E.C.I.P.A. s. 15). Saving for creditors.

## II. SENDING IN CLAIMS.

Every claim against any person in respect of any expense incurred by or on behalf of a candidate at an election of a county councillor, on account of or in respect of the conduct or management of such election, shall be sent in within fourteen days after the day of election, and if not so sent in shall be barred and not paid (M.E.C.I.P.A. s. 21, sub. 1). This section does not prescribe the person to whom the claim is to be sent in, and it may therefore presumably be sent in to any duly authorised agent, but if there be no such agent it must be sent in to the candidate and to no one else. If a claim is sent in, neither to the candidate, nor yet to his duly authorised agent (if any), it is not "sent in" within the meaning of the Act, and is apparently barred and cannot be paid (*ib.* sub. 1). The court has no power to deal with a claim sent in to the wrong person, except by allowing it to be sent in over again after the time limited (*ib.* sub. 6, and *cf.* C.I.P.P.A. s. 29, sub. 9).

It would seem that the words "sent in" imply that the claim must be *received* within the fourteen days; and at all events, until it has been judicially decided Within what time.



CHAP. XVI. otherwise, this is the only safe construction to adopt. — These fourteen days must be calculated exclusively of the day of election, but inclusively of the day of sending in (*Williams v. Burgess*, 12 A. & E. 635) ; and as there is no provision in this Act excluding Sundays, etc. (unless the view as to the application of M.C.A. s. 230 to the M.E.C.I.P.A. stated *post*, p. 167, be accurate), Sundays, etc., must be included, and if the last day happens to fall on a Sunday, etc., the claim must be sent in on that day, or on the previous Saturday. It must also be carefully borne in mind that “the day of election” is not the day when the votes are counted, or the result declared, but is the day appointed by the returning officer and announced in his notice of election.

Leave to send in after time. The county court for the district in which the election was held, or the High Court, or an election court, may, on application either of the candidate or of a creditor, allow any claim to be sent in after the time limited (M.E.C.I.P.A. s. 21, sub. 6 ; and see further hereon, *post*, p. 209).

Advertising for claims. Where the expense thereof can be incurred without exceeding the maximum allowance, it is desirable, and may avoid subsequent applications to the court, to advertise for claims in the same manner as a returning officer is required to do in his notice of election (see 38 & 39 Vict. c. 84, s. 7 ; L.G.A. s. 75, sub. 19 ; and, for a form of advertisement, see Election Agent, p. 465).

Claims amounting to 20s. Where the claim amounts to twenty shillings, it must be sent in by a bill stating the particulars (M.E.C.I.P.A. s. 21, sub. 3).

### III. PAYMENT OF CLAIMS.

Within what time. All election expenses shall be paid within twenty-one days after the day of election, and not otherwise (M.E.C.I.P.A. s. 21, sub. 1). As to how these twenty-one days are calculated, see *supra*, and *post*, p. 167.

No payment can be made after the expiration of the above time, except by leave of the court, and any person who makes such a payment is guilty of an illegal practice

(M.E.C.I.P.A. s. 21, sub. 1). If, however, such payment was made without the sanction or connivance of the candidate, his election shall not be void, nor shall he be subject to any incapacity by reason thereof (*ib.*). CHAP. XVI.

The payment must be made by the candidate, or by his authorised agent (see M.E.C.I.P.A. s. 21, sub. 1, and the form of declaration prescribed by *ib.* sub. 3, No. 5, *post*, p. 232), and by no one else (see *re Parker*, 21 Ch. D. 408). By whom.

Every payment must be vouched (except in the case of sums under twenty shillings) by a bill stating the particulars and by a receipt (M.E.C.I.P.A. s. 21, sub. 3). Voucher.

There is no provision for the taxation or adjudication of disputed claims. If, therefore, the candidate cannot agree the amount with the claimant in sufficient time to enable the former to pay the latter within the time limited, he must leave the claimant to bring his action at law; and, on his establishing his claim therein, the court can give leave for the payment thereof after the time limited (M.E.C.I.P.A. s. 21, sub. 6; and see further hereon, *post*, p. 209). Disputed claims.

The same court that can give leave to send in a claim after the time limited (see *ante*, p. 162), can also give leave to pay a claim after the time limited (M.E.C.I.P.A. s. 21, sub. 6, and see further hereon, *post*, p. 209). Leave to pay after time.

#### IV. RETURN AND DECLARATION.

Every agent of a candidate at an election of a county councillor shall, within twenty-three days after the day of election, make a return to the candidate in writing of all election expenses incurred by such agent, under a fine of fifty pounds (M.E.C.I.P.A. s. 21, sub. 2). As to how these twenty-three days are calculated, see *ante*, p. 162, and *post*, p. 167). No form is prescribed for this return, and therefore any form may be adopted that gives sufficient information to the candidate to enable him to make *his* return and declaration as to election expenses (see *passim*). Agent's return to candidate.

## CHAP. XVI

Candidate's  
return and  
declaration.

Within twenty-eight days after the day of election of a county councillor, every candidate at such election shall send to the clerk of the county council a return of all election expenses incurred by such candidate or his agents, vouched (except in the case of sums under twenty shillings) by bills stating the particulars and receipts and accompanied by a declaration by the candidate made before a justice, in the form (No.5, *post*, p. 232) set forth in the fourth schedule to the Act, or to the like effect (M.E.C.I.P.A. s. 21, sub. 3; L.G.A. s. 75, sub. 5). As to how these twenty-eight days are calculated, see *ante*, p. 162, and *post*, p. 167. No form of return is prescribed, and although, therefore, the legislature doubtless did not intend that this return should be sent in the same detail, and with the same particularity, as in the case of a parliamentary election, it seems desirable to follow, so far as practicable, the form prescribed for use at parliamentary elections (as to which see C.I.P.P.A. s. 33, sub. 1, and Election Agent, p. 531). A return must be sent even though no expenses have been incurred (*ex parte Robson*, 18 Q. B. D. 336).

Failure to  
make return  
or declaration.

If the return and declaration are not made before the expiration of the time limited, the candidate shall not, after the expiration of such time, and until either the return and declaration have been made, or an authorised excuse allowed, sit or vote, under a penalty of fifty pounds for every day on which he sits or votes, to any person who sues for the same (M.E.C.I.P.A. s. 21, sub. 4); moreover, such failure is an illegal practice (*ib.* s. 21, sub. 5), rendering him liable to a fine of £100 and to certain incapacities (*ib.* s. 7), and his election liable to be avoided (*ib.* s. 8). Up to the expiration of the time limited the candidate may sit and vote without incurring the above-mentioned penalty, though not without incurring liability to the above-mentioned fine, incapacities, and avoidance of election. As to the allowance of an authorised excuse for a failure to make a return or declaration, see *post*, p. 206.

Insufficient  
return.

An insufficient return, being no return, entails the same consequences as a failure to make any return.

A false declaration is a corrupt practice ; and, in CHAP. XVI. addition to the penalties for a corrupt practice, it sub-  
jects the candidate to the punishment for wilful and False declara-  
tion. corrupt perjury (M.E.C.I.P.A. s. 21, sub. 5).

Where, after the return is made, leave is given by the Return of  
claims paid  
by leave. court for any claim to be paid, a return of the sum so  
paid shall forthwith after payment be sent to the clerk of  
the county council (M.E.C.I.P.A. s. 21, sub. 6 ; L.G.A.  
s. 75, sub. 5).

The return and declaration sent to the clerk of the Custody and  
inspection. county council shall be kept at his office, and shall at  
all reasonable times during the twelve months next  
after they are received by him, be open to inspection by  
any person on payment of a fee of one shilling, and the  
clerk of the county council shall, on demand, furnish  
copies thereof, or of any part thereof, at the price of two  
pence for every seventy-two words (M.E.C.I.P.A. s. 21,  
sub. 10 ; L.G.A. s. 75, sub. 5). The clerk of the county  
council should record the day on which he receives the  
return and declaration, both because of the above  
provision, and because the time for presenting an  
election petition runs therefrom (M.E.C.I.P.A. s. 25,  
sub. 1 ; L.G.A. s. 75, sub. 5).

After the expiration of the said twelve months, the Destruction. clerk of the county council may cause the return and  
declaration to be destroyed ; or, if the candidate so  
desire, shall return the same to him (M.E.C.I.P.A.  
s. 21, sub. 11 ; L.G.A. s. 75, sub. 5).

## TIME TABLES FOR THE FIRST ELECTION.

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<i>Computation of time under</i>		<i>Under Returning Officers Act,</i>	
<i>L.G.A.</i> . . . . .	166	1875 . . . . .	167
<i>Under M.C.A.</i> . . . . .	”	<i>Miscalculation or mistake</i> . . . . .	”
<i>Under M.E.C.I.P.A.</i> . . . . .	167	<i>Time Tables</i> . . . . .	169

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THE tables at the end of this chapter show all the dates for every act to be done on a fixed date in respect of the first election of county councillors to be held in January, 1889. The principles on which these times are calculated, and these tables are framed, are discussed *ante*, p. 109; but some further general observations on the computation of time under the different statutes involved in these tables may here be added.

Computation of time under L.G.A. The L.G.A. (s. 103, sub. 1) determines the last day for giving the notice of election, and provides for the fixing of the day of election, and upon the latter date the majority of the other dates are dependent. The L.G.A. contains no provision as to computation of time, or as to Sundays, etc., but applies, so far as is consistent, M.C.A. s. 230, as if it were re-enacted in the L.G.A. (L.G.A. s. 75).

Under M.C.A. The M.C.A. determines all the dates intervening between the giving of the notice of election and the day of election. The provisions of s. 230 of that Act have already been frequently alluded to (see *ante*, p. 109), and it is only necessary here to remind the reader that Sundays, etc., have to be *included* in computing the last day for notice of election, and for delivery of nomination papers, and of the other events prior to the day of election, because as these are acts which are not required

to be done *within* a limited period of time, they do not CHAP. XVII.  
fall within M.C.A. s. 230, sub. 3.

The M.E.C.I.P.A. determines the dates subsequent to Under  
the day of election relating to the sending in and pay- M.E.C.I.P.A.  
ment of claims against the candidate, and to the return  
and declaration respecting election expenses. That  
statute also contains no provision as to computation of  
time, or as to Sundays, etc., and it has hitherto not  
been possible to apply M.C.A. s. 230 in construing  
M.E.C.I.P.A. Inasmuch, however, as the L.G.A. s. 75,  
speaks of the M.E.C.I.P.A. as an Act amending the  
M.C.A., and re-enacts and incorporates both into itself  
and by that same section, it would seem that M.C.A.  
s. 230 may now be resorted to in computing time under  
the provisions of the M.E.C.I.P.A. applied to the L.G.A.  
But the times now under consideration are, if ordinary  
activity be used, sufficiently extensive to render any  
resort to this construction unnecessary.

The Returning Officers Act, 1875 (38 & 39 Vict. Under Re-  
c. 84), as amended by L.G.A. s. 75, sub. 19, determines turning  
the dates subsequent to the day of election relating to Officers Act,  
the sending in of claims against the returning officer, 1875.  
and to his account, and to the taxation thereof. That  
statute also contains no provision as to computation  
of time, or as to Sundays, etc., but provides by s. 1,  
that it and the B.A. "shall be construed as one Act."  
Now the B.A. by r. 56 provides that in reckoning time  
Sundays, etc., shall in *all* cases be *excluded*, and Sundays,  
etc., are therefore excluded in reckoning the times fixed  
by the Returning Officers Act in relation to parliamen-  
tary elections. But s. 1 of that Act is not applied to  
the L.G.A., and thus B.A. r. 56 is not to be regarded in  
reckoning these times in relation to local government  
elections. The same question, however, arises as to  
whether M.C.A. s. 230 may not now be resorted to in  
construing these provisions as above mentioned with  
respect to the M.E.C.I.P.A.

So far as regards times fixed under the M.C.A. and Miscalculation  
the L.G.A. little, if any, practical danger is likely to arise or mistake.  
from any miscalculation or *bonâ fide* mistake, inasmuch



CHAP. XVII. as it is enacted that an election shall not be invalidated by non-compliance with the rules in M.C.A. sch. III. if it appears to the court having cognizance of the question that the election was conducted in accordance with the principles laid down *in the body* of the Act (M.C.A. s. 72). This, therefore, practically saves any accidental miscalculation or *bonâ fide* error with respect to any of the dates down to and including the day of election ; and the subsequent, though equally important, dates, do not affect the validity of the election then already held.

	1888.	1883.	1888.	1888.
Last day for notice of election	Mon., 31 Dec.	Mon., 31 Dec.	Mon., 31 Dec.	Mon., 31 Dec.
	1889.	1889.	1889.	1889.
Last day and hour for delivery of nomination papers.	Mon., 7 Jan., at 4.59 P.M.*	Mon., 7 Jan., at 4.59 P.M.	Tues., 8 Jan., at 4.59 P.M.	Wed., 9 Jan., at 4.59 P.M.
Last day and hour for delivery of appointment of candidate's representative.	Mon., 7 Jan., at 4.59 P.M.	Mon., 7 Jan., at 4.59 P.M.	Tues., 8 Jan., at 4.59 P.M.	Wed., 9 Jan., at 4.59 P.M.
Notice of nominations to be sent to each candidate.	Mon., 7 Jan.,	Mon., 7 Jan.	Tues., 8 Jan.	Wed., 9 Jan.
Last day and hour for delivery of notice of candidate's withdrawal.	Tues., 8 Jan., at 2 P.M.	Tues., 8 Jan., at 2 P.M.	Wed., 9 Jan., at 2 P.M.	Thurs., 10 Jan., at 2 P.M.
Adjudication on objections to nomination papers.	Tues., 8 Jan., 2 to 4 P.M.	Tues., 8 Jan., 2 to 4 P.M.	Wed., 9 Jan., 2 to 4 P.M.	Thurs., 10 Jan., 2 to 4 P.M.
Last day for notice of situation, etc., of polling places, etc.	Wed., 9 Jan.	Thurs., 10 Jan.	Frid., 11 Jan.	Sat., 12 Jan.
Last day for publication of valid nominations	Sat., 12 Jan.	Sat., 12 Jan.†	Mon., 14 Jan.	Tues., 15 Jan.
Day of Election . . . . .	Mon., 14 Jan.	Tues., 15 Jan.	Wed., 16 Jan.	Thurs., 17 Jan.
First Meeting of Provisional Council.	Thurs., 24 Jan.	Thurs., 24 Jan.	Thurs., 24 Jan.	Thurs., 31 Jan.
Last day for sending in claims against candidate for election expenses.	Mon., 28 Jan.	Tues., 29 Jan.	Wed., 30 Jan.	Thurs., 31 Jan.
Last day for transmission of claims against returning officer.	Tues., 29 Jan.‡	Wed., 30 Jan.‡	Thurs., 31 Jan.‡	Frid., 1 Feb.‡
Last day for payment of candidate's election expenses.	Mon., 4 Feb.	Tues., 5 Feb.	Wed., 6 Feb.	Thurs., 7 Feb.
Last day for transmission of returning officer's account.	Tues., 5 Feb.‡	Wed., 6 Feb.‡	Thurs., 7 Feb.‡	Frid., 8 Feb.‡
Last day for agent's return to candidate of election expenses.	Wed., 6 Feb.	Thurs., 7 Feb.	Frid., 8 Feb.	Sat., 9 Feb.
Last day for candidate's return and declaration respecting election expenses.	Mon., 11 Feb.	Tues., 12 Feb.	Wed. 13 Feb.	Thurs., 14 Feb.
Last day for application to tax returning officer's account.	Tues., 5 Mar.	Wed., 6 Mar.	Thurs., 7 Mar.	Frid., 8 Mar.

\* "Seven days at least before the day of election," makes Sunday, 6 Jan., *prima facie*, the last day for delivery of nomination papers, and Monday, 7 Jan., is therefore substituted; see *ante*, p. 110.

† This publication should be made on this day instead of on Monday 14 Jan., because in the latter case a day does not intervene between the publication and the election; see *ante*, p. 107.

‡ These days are calculated on the assumption that the "return of the persons elected" is made on the day after the day of election, or on the Monday, where the day after the day of election is a Sunday.

	1888.	1888.	1888.	1888.
Last day for notice of election	Mon., 31 Dec.	Mon., 31 Dec.	Mon., 31 Dec.	Mon., 31 Dec.
	1889.	1889.	1889.	1889.
Last day and hour for delivery of nomination papers.	Thurs., 10 Jan., at 4.59 P.M.	Frid., 11 Jan., at 4.59 P.M.	Mon., 14 Jan., at 4.59 P.M.*	Mon., 14 Jan., at 4.59 P.M.
Last day and hour for delivery of appointment of candidate's representative.	Thurs., 10 Jan., at 4.59 P.M.	Frid., 11 Jan., at 4.59 P.M.	Mon., 14 Jan., at 4.59 P.M.	Mon., 14 Jan., at 4.59 P.M.
Notice of nominations to be sent to each candidate.	Thurs., 10 Jan.	Frid., 11 Jan.	Mon., 14 Jan.	Mon., 14 Jan.
Last day and hour for delivery of notice of candidate's withdrawal.	Frid., 11 Jan., at 2 P.M.	Sat., 12 Jan., at 2 P.M.	Tues., 15 Jan., at 2 P.M.	Tues., 15 Jan., at 2 P.M.
Adjudication on objections to nomination papers.	Frid., 11 Jan., 2 to 4 P.M.	Sat., 12 Jan., 2 to 4 P.M.	Tues., 15 Jan., 2 to 4 P.M.	Tues., 15 Jan., 2 to 4 P.M.
Last day for notice of situation, etc., of polling places, etc.	Mon., 14 Jan.†	Mon., 14 Jan.	Wed., 16 Jan.	Thurs., 17 Jan.
Last day for publication of valid nominations.	Wed., 16 Jan.	Thurs., 17 Jan.	Sat., 19 Jan.	Sat., 19 Jan.‡
Day of Election . . . . .	Frid., 18 Jan.	Sat., 19 Jan.	Mon., 21 Jan.	Tues., 22 Jan.
First Meeting of Provisional Council.	Thurs., 31 Jan.	Thurs., 31 Jan.	Thurs., 31 Jan.	Thurs., 31 Jan.
Last day for sending in claims against candidate for election expenses.	Frid., 1 Feb.	Sat., 2 Feb.	Mon., 4 Feb.	Tues., 5 Feb.
Last day for transmission of claims against returning officer.	Sat., 2 Feb.§	Mon., 4 Feb.§	Tues., 5 Feb.§	Wed., 6 Feb.§
Last day for payment of candidate's election expenses.	Frid., 8 Feb.	Sat., 9 Feb.	Mon., 11 Feb.	Tues., 12 Feb.
Last day for transmission of returning officer's account.	Sat., 9 Feb.§	Mon., 11 Feb.§	Tues., 12 Feb.§	Wed., 13 Feb.§
Last day for agent's return to candidate of election expenses.	Sun., 10 Feb.	Mon., 11 Feb.	Wed., 13 Feb.	Thurs., 14 Feb.
Last day for candidate's return and declaration respecting election expenses.	Frid., 15 Feb.	Sat., 16 Feb.	Mon., 18 Feb.	Tues., 19 Feb.
Last day for application to tax returning officer's account.	Sat., 9 Mar.	Mon., 11 Mar.	Tues., 12 Mar.	Wed., 13 Mar.

\* "Seven days at least before the day of election," makes Sunday, 13 Jan., *primâ facie*, the last day for delivery of nomination papers, and Monday, 14 Jan., is therefore substituted; see *ante*, p. 110.

† "At least four days before the day of election," makes Sunday, 13 Jan., *primâ facie*, the last day for giving this notice, and Monday 14 Jan., is therefore substituted; see *ante*, p. 110.

‡ This publication should be made on this day instead of on Monday, 21 Jan., because in the latter case a day does not intervene between the publication and the election; see *ante*, p. 107.

§ These days are calculated on the assumption that the "return of the persons elected" is made on the day after the day of election, or on the Monday, where the day after the day of election is a Sunday.

|| As this day is a Sunday, it will be better to make this return on the previous Saturday.

	1888.	1888.	1888.	1888.
Last day for notice of election	Mon., 31 Dec.	Mon., 31 Dec.	Mon., 31 Dec.	Mon., 31 Dec.
	1889.	1889.	1889.	1889.
Last day and hour for delivery of nomination papers.	Tues., 15 Jan., at 4.59 P.M.	Wed., 16 Jan., at 4.59 P.M.	Thurs., 17 Jan., at 4.59 P.M.	Frid., 18 Jan., at 4.59 P.M.
Last day and hour for delivery of appointment of candidate's representative.	Tues., 15 Jan., at 4.59 P.M.	Wed., 16 Jan., at 4.59 P.M.	Thurs., 17 Jan., at 4.59 P.M.	Frid., 18 Jan., at 4.59 P.M.
Notice of nominations to be sent to each candidate.	Tues., 15 Jan.	Wed., 16 Jan.	Thurs., 17 Jan.	Frid., 18 Jan.
Last day and hour for delivery of notice of candidates' withdrawal.	Wed., 16 Jan., at 2 P.M.	Thurs., 17 Jan., at 2 P.M.	Frid., 18 Jan., at 2 P.M.	Sat., 19 Jan., at 2 P.M.
Adjudication on objections to nomination papers.	Wed., 16 Jan., 2 to 4 P.M.	Thurs., 17 Jan., 2 to 4 P.M.	Frid., 18 Jan., 2 to 4 P.M.	Sat., 19 Jan., 2 to 4 P.M.
Last day for notice of situation, etc., of polling places, etc.	Frid., 18 Jan.	Sat., 19 Jan.	Mon., 21 Jan.*	Mon., 21 Jan.
Last day for publication of valid nominations.	Mon., 21 Jan.	Tues., 22 Jan.	Wed., 23 Jan.	Thurs., 24 Jan.
Day of Election . . . . .	Wed., 23 Jan.	Thurs., 24 Jan.	Frid., 25 Jan.	Sat., 26 Jan.
First Meeting of Provisional Council.	Thurs., 31 Jan.	Thurs., 7 Feb.	Thurs., 7 Feb.	Thurs., 7 Feb.
Last day for sending in claims against candidate for election expenses.	Wed., 6 Feb.	Thurs., 7 Feb.	Frid., 8 Feb.	Sat., 9 Feb.
Last day for transmission of claims against returning officer.	Thurs., 7 Feb.†	Frid., 8 Feb.	Sat., 9 Feb.†	Mon., 11 Feb.†
Last day for payment of candidate's election expenses.	Wed., 13 Feb.	Thurs., 14 Feb.	Frid., 15 Feb.	Sat., 16 Feb.
Last day for transmission of returning officer's account.	Thurs., 14 Feb.†	Frid., 15 Feb.†	Sat., 16 Feb.†	Mon., 18 Feb.†
Last day for agent's return to candidate of election expenses.	Frid., 15 Feb.	Sat., 16 Feb.	Sun., 17 Feb.‡	Mon., 18 Feb.
Last day for candidate's return and declaration respecting election expenses.	Wed., 20 Feb.	Thurs., 21 Feb.	Frid., 22 Feb.	Sat., 23 Feb.
Last day for application to tax returning officer's account.	Thurs., 14 Mar.	Frid., 15 Mar.	Sat., 16 Mar.	Mon., 18 Mar.

\* "At least four days before the day of election," makes Sunday, 20 Jan., *primâ facie*, the last day for giving this notice, and Monday, 21 Jan., is therefore substituted; see *ante*, p. 110.

† These days are calculated on the assumption that the "return of the persons elected" is made on the day after the day of election, or on the Monday, where the day after the day of election is a Sunday.

‡ As this day is a Sunday, it will be better to make this return on the previous Saturday.

	1888.	1888.	1888.	1888.
Last day for notice of election	Mon., 31 Dec.	Mon., 31 Dec.	Mon., 31 Dec.	Mon., 31 Dec.
	1889.	1889.	1889.	1889.
Last day and hour for delivery of nomination papers.	Mon., 21 Jan., at 4.59 P.M.*	Mon., 21 Jan., at 4.59 P.M.	Tues., 22 Jan., at 4.59 P.M.	Wed., 23 Jan., at 4.59 P.M.
Last day and hour for delivery of appointment of candidate's representative.	Mon., 21 Jan., at 4.59 P.M.	Mon., 21 Jan., at 4.59 P.M.	Tues., 22 Jan., at 4.59 P.M.	Wed., 23 Jan., at 4.59 P.M.
Notice of nominations to be sent to each candidate.	Mon., 21 Jan.	Mon., 21 Jan.	Tues., 22 Jan.	Wed., 23 Jan.
Last day and hour for delivery of notice of candidate's withdrawal.	Tues., 22 Jan., at 2 P.M.	Tues., 22 Jan., at 2 P.M.	Wed., 23 Jan., at 2 P.M.	Thurs., 24 Jan., at 2 P.M.
Adjudication on objections to nomination papers.	Tues., 22 Jan., 2 to 4 P.M.	Tues., 22 Jan., 2 to 4 P.M.	Wed., 23 Jan., 2 to 4 P.M.	Thurs., 24 Jan., 2 to 4 P.M.
Last day for notice of situation, etc., of polling places, etc.	Wed., 23 Jan.	Thurs., 24 Jan.	Frid., 25 Jan.	Sat., 26 Jan.
Last day for publication of valid nominations.	Sat., 26 Jan.	Sat., 26 Jan.†	Mon., 28 Jan.	Tues., 29 Jan.
Day of Election . . . . .	Mon., 28 Jan.	Tues., 29 Jan.	Wed., 30 Jan.	Thurs., 31 Jan.
First Meeting of Provisional Council.	Thurs., 7 Feb.	Thurs., 7 Feb.	Thurs., 7 Feb.	Thurs., 14 Feb.
Last day for sending in claims against candidate for election expenses.	Mon., 11 Feb.	Tues., 12 Feb.	Wed., 13 Feb.	Thurs., 14 Feb.
Last day for transmission of claims against returning officer.	Tues., 12 Feb.‡	Wed., 13 Feb.‡	Thurs., 14 Feb.‡	Frid., 15 Feb.‡
Last day for payment of candidate's election expenses.	Mon., 18 Feb.	Tues., 19 Feb.	Wed., 20 Feb.	Thurs., 21 Feb.
Last day for transmission of returning officer's account.	Tues., 19 Feb.‡	Wed., 20 Feb.‡	Thurs., 21 Feb.‡	Frid., 22 Feb.‡
Last day for agent's return to candidate of election expenses.	Wed., 20 Feb.	Thurs., 21 Feb.	Frid., 22 Feb.	Sat., 23 Feb.
Last day for candidate's return and declaration respecting election expenses.	Mon., 25 Feb.	Tues., 26 Feb.	Wed., 27 Feb.	Thurs., 28 Feb.
Last day for application to tax returning officer's account.	Tues., 19 Mar.	Wed., 20 Mar.	Thurs., 21 Mar.	Frid., 22 Mar.

\* "Seven days at least before the day of election," makes Sunday, 20 Jan., *primâ facie*, the last day for delivery of nomination papers, and Monday, 21 Jan., is therefore substituted; see *ante*, p. 110.

† This publication should be made on this day instead of on Monday, 28 Jan., because in the latter case a day does not intervene between the publication and the election; see *ante*, p. 107.

‡ These days are calculated on the assumption that the "return of the persons elected" is made on the day after the day of election, or on the Monday, where the day after the day of election is a Sunday.

## CHAPTER XVIII.

## CHAP. XVIII.

## THE COUNTY ALDERMEN.

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THE county aldermen shall be fit persons elected by the county council (M.C.A. s. 14, sub. 1), but a person shall not be qualified to be elected or to be a county alderman unless he is a county councillor, or qualified to be a county councillor (*ib.* sub. 3). The county aldermen may therefore be elected from among the persons already elected county councillors, or from persons not elected, but who are qualified to be elected and to be, county councillors. As to who are such persons, see *ante*, p. 17.

The same persons are exempt from service as county aldermen as are exempt from service as county councillors, as to which see *ante*, p. 47.

The number of county aldermen shall be one third of the number of county councillors (M.C.A. s. 14, sub. 2).

The provisional councillors shall at their first meeting, or at some adjournment thereof, proceed to elect the

QUALIFICATION.  
\_\_\_\_\_

Exemption  
from service.

ELECTION.  
First election.



CHAP. XVIII. county aldermen in like manner as if they were a fully constituted county council (L.G.A. s. 105, sub. 3). The first meeting of the provisional councillors is held on the second Thursday next after the day fixed for the first election (*ib.* sub. 2, and see *ante*, p. 109); and they must then, after electing their chairman (as to which see *post*, p. 181) elect the county aldermen by voting papers in the same manner in every way as county aldermen will be elected at subsequent elections and in subsequent years.

Subsequent  
elections.

In future years the ordinary day of election shall be the 7th of November (M.C.A. s. 60, sub. 1; L.G.A. s. 75, sub. 13); and the election shall take place at the quarterly meeting of the county council held on that day at noon, and immediately after the election of chairman of the county council (M.C.A. s. 60, subs. 1, 2; sch. II. r. 2). If the 7th of November falls on a Sunday, the election may be held on the next day after, not being a day appointed for public fast, humiliation or thanksgiving (*ib.* s. 230, sub. 2). If the election of aldermen precedes the election of the chairman, it is void (*R. v. McGowan*, 11 A. & E. 885; *R. v. Dudley*, *ib.* 886). No business inconsistent with these elections can be transacted or discussed prior thereto (*R. v. Parkyns*, 3 B. & A. 668). No motion, not even for adjournment, should be entertained until after these elections have been held; until then the county council is incomplete and incompetent to transact any other business.

Chairman of  
meeting.

The chairman at the meeting at which the first county aldermen are elected is the chairman elected by the provisional councillors at their first meeting (L.G.A. s. 105, sub. 3; and see further hereon, *post*, p. 181). At future elections the chairman of the county council, if present, shall be the chairman; if he is absent, then the vice-chairman, if chosen for that purpose by the members of the council then present, shall be chairman; if both the chairman of the county council and the vice-chairman are absent, or the vice-chairman, being present, is not chosen, then such county alderman, or in the absence of all the aldermen, such county councillor, as

the members of county council then present choose, CHAP. XVIII.  
shall be chairman (M.C.A. sch. II. r. 9).

Until there is a chairman there can be no casting vote, and if therefore the meeting (not being the first or second meeting of the provisional council, see L.G.A. s. 107, subs. 6, 4) is equally divided as to the choice of a chairman, no progress can be made until some one person withdraws his vote.

There seems to be nothing illegal or improper in a chairman, who is a candidate for an aldermanic vacancy, presiding as chairman at his own election (see *R. v. Stanley*, 11 A. & E. 882).

Every person entitled to vote may vote (M.C.A. s. 60, Voters. sub. 4); that is, every member of the county council present (*ib.* sch. II. r. 10), except the county aldermen, who shall not, *as such*, vote in the election of a county alderman (L.G.A. s. 2, sub. 2, *c.*). This subsection of the L.G.A. was not in the Bill as introduced, it was inserted in committee in the Commons, but without the words "as such," which words were afterwards added on the report stage in that House. The provision is a repeal of, and in substitution for, M.C.A. s. 60, sub. 3, and so far as it prohibits a county alderman from voting in the election of a county alderman its object and effect are clear. But the effect of the words of limitation "as such," is not so clear, although their object appears to have been to preserve to the county alderman any other title to vote that he may possess, so that if he can vote without voting as alderman, he may be enabled to do so. But a person cannot hold two incompatible offices at one and the same time, and the right of election to the office of county alderman is vested in members of the county council other than county aldermen. Now a county alderman when elected a county councillor vacates his office of county alderman (see *post*, p. 179) because the one office is incompatible with the other; he can then vote, but he votes as county councillor, not as county alderman. It has also been held that a mayor, who as outgoing alderman cannot vote in the election of a borough alderman (M.C.A. s. 60, sub. 3), has no original

CHAP. XVIII. — vote as mayor at the election of a borough alderman (*R. v. Stanley*, 11 A. & E. 886; *acc. Hounsell v. Suttill*, 19 Q. B. D. 498); and, by analogy therefore, a chairman of a county council, being a county alderman, cannot vote at the election of a county alderman. It thus seems impossible to imagine a case in which a county alderman can vote at the election of county aldermen without voting as a county alderman, and if so the words "as such" in L.G.A. s. 2, sub. 2, *c.* are inoperative and of no effect.

Voting  
papers.

The votes are given by voting papers (M.C.A. s. 60, sub. 4), which must be in writing, and may therefore be partly in writing and partly in print (L.G.A. s. 99, as in *Summers v. Moorhouse*, 13 Q.B.D. 388).

Number of  
votes.

Every person entitled to vote may vote for any number of persons not exceeding the number of vacancies (M.C.A. s. 60, sub. 4); every person may therefore vote for as many persons as there are vacancies, or for any less number, or for one only. But if a voter fills up his voting paper with a greater number of names than there are vacancies, it is void.

Contents of  
voting paper.

The voting paper must contain the surnames and other names, and places of abode and descriptions, of each of the persons for whom the voter votes (M.C.A. s. 60, sub. 4). As to what is a surname, see *ante*, p. 95. The Christian names of the person voted for need not be written at full length, a contraction in ordinary use and commonly understood is sufficient (*R. v. Bradley*, 3 E. & E. 634), and so perhaps are initials (*R. v. Plenty*, L. R. 4 Q. B. 346; but see *Mather v. Brown*, 1 C.P.D. 596); but a surname alone without any other names is clearly insufficient (M.C.A. s. 60, sub. 4; and see *R. v. Mayor, etc., of Wilton*, 34 W. R. 273). As to what is a person's place of abode, see *ante*, p. 95; and as to what is his description, see *ante*, p. 97. A voting paper which does not give place of abode and description is bad (see *R. v. Mayor, etc., of Wilton*, 34 W. R. 273).

Signing.

The voting paper must be signed, (M.C.A. s. 60, sub. 4), but the statute does not require it to be subscribed (*cf. ib. sch. III. part II. r. 2*; and *ante*, p. 97). To "sign"

is to mark or ratify by writing one's name, and a voting paper commencing "I. A. B.," if in the voter's handwriting, is probably well signed although it be not subscribed (*Knight v. Crockford*, 1 Esp. 190; *Taylor v. Dobbins*, 1 Stra. 399; *Saunderson v. Jackson*, 2 B. & P. 239). The voter's usual signature is sufficient (*R. v. Avery*, 18 Q. B. 576; *R. v. Mayor of Hartlepool*, 2 L. M. & P. 666), and it is therefore sufficient if he signs his surname in full and his Christian names by initials. But signature is essential; a voting paper not signed but approved by the voter is insufficient (*Hounsell v. Suttill*, 19 Q. B. D. 501). And the signature must be personal, and not by agent or procuration (see *Toms v. Cuming*, 7 M. & G. 88; 1 Lutw. 200).

The voting paper must be personally delivered by the voter to the chairman at the meeting (M.C.A. s. 60, sub. 4); the voter must not pass it by other hands to the chairman (*R. v. Mayor, etc., of Wilton*, 34 W. R. 273). The chairman, if entitled to vote, places his own voting paper with the other voting papers (*Hounsell v. Suttill*, 19 Q. B. D. 499).

On delivery of a voting paper it is the chairman's duty to ascertain two things; first, that it is a voter who delivers the voting paper; and secondly, that he has signed it (*Summers v. Moorhouse*, 13 Q. B. D. 391). Where a voting paper commenced "I. A. B.," but was signed by C. D., and it appeared that the name A. B. was inserted in order that the voting paper might be used by A. B., but by inadvertence it was delivered to C. D., who signed and delivered it to the chairman, it was held that the vote was valid, and that evidence was admissible, and was rightly received, to explain the ambiguity, and the circumstances under which the vote was given (*ib.*).

An informal voting paper may, it is submitted, be withdrawn, and amended, and re-delivered to the chairman, so as to make it a valid "voting paper," at any time before the chairman has declared who are elected.

As soon as *all* the voting papers have been delivered to the chairman, he shall openly produce and read them,

CHAP. XVIII.

Delivery.

Amendment  
and re-  
delivery.Reading the  
voting papers.

CHAP. XVIII. or cause them to be read (M.C.A. s. 60, sub. 5). The votes given to each person must then be added together, and the persons, not exceeding the number of vacancies, who have the greatest number of votes, shall be declared by the chairman to be, and thereupon shall be, elected (*ib.* sub. 7). The election is complete and ended as soon as this declaration of the chairman has been made; but the persons elected cannot act until they have accepted office, and have made and subscribed the statutory declaration (as to which, see *post*, p. 186).

Casting vote. In case of equality of votes at the first meeting of the provisional county council, the chairman of the meeting shall have a second or casting vote (L.G.A. s. 107, sub. 4). In future elections in case of equality of votes, the chairman, although as an alderman or otherwise not entitled to vote in the first instance, shall have the casting vote (M.C.A. s. 60, sub. 6). This casting vote is given by word of mouth.

Misnomer or inaccurate description. No misnomer or inaccurate description of any person or place named in any voting paper shall hinder the full operation of the M.C.A. with respect to that person or place, provided the description of that person or place be such as to be commonly understood (M.C.A. s. 241). As to what is "commonly understood," see *ante*, p. 91).

Custody of voting papers. After the voting papers have been produced and read by the chairman, he shall deliver them to the clerk of the county council to be kept for twelve months (M.C.A. s. 60, sub. 5; L.G.A. s. 75, sub. 5). At the expiration of that time, the voting papers may, it would seem, be destroyed by the clerk of the county council.

Failure to elect. If the election is not held on the appointed day, it may be held on the day next after that day (M.C.A. s. 70, sub. 1); if not held on the latter day, the High Court may grant a mandamus for the election to be held on a day appointed by the Court (*ib.* sub. 2; and see *R. v. Mayor, etc., of Wilton*, 34 W. R. 273), and public notice must in that case be given (M.C.A. s. 70, sub. 3, and see *ante*, p. 91). Thus, if the majority of the council decline to proceed to an election on the proper day, an election by the minority is no election, and the



court will grant a mandamus for the holding of a new election (*R. v. Mayor, etc., of Bradford*, 20 L. J. Q. B. 227). CHAP. XVIII.

If a county councillor is elected to, and accepts, the office of county alderman, he vacates his office of county councillor (M.C.A. s. 14, sub. 4); and if a county alderman is elected to, and accepts the office of county councillor, he vacates his office of county alderman (*R. v. Mayor, etc., of Bangor*, 18 Q. B. D. 349; but see S. C. in H. L. sub. nom. *Pritchard v. Mayor, etc., of Bangor*, 13 App. Cas. 241). OFFICE.  
Vacating office.

The term of office of a county alderman, other than the county aldermen first elected, shall be six years (M.C.A. s. 14, sub. 5). The term begins on the day of the county alderman's election (7th of November), and ends on that day six years (*ib.* sub. 6). As to the term of office of an alderman elected to fill a casual vacancy, see *ib.* s. 40, sub. 1. Term of office

Of the first county aldermen, one half shall retire on the ordinary day of election of county aldermen in the third calendar year next after the passing of the L.G.A., and the one half who are so to retire shall be determined by ballot by the provisional councillors at the time of the election of the county aldermen; provided that where the total number of aldermen is not divisible by two, the larger half shall first retire (L.G.A. s. 104, subs. 2, 4). The ordinary day of election is the 7th of November (*ib.* s. 75, sub. 13), and the first retirement of county aldermen will therefore be on the 7th of November, 1891. The first election of county aldermen will take place at the first meeting of the provisional councillors, or at some adjournment thereof (*ib.* s. 105, sub. 3, and see *ante*, p. 173), and the ballot to determine which aldermen are first to retire will then take place. Retirement of  
first county  
aldermen.

The remaining half of the first county aldermen shall retire on the ordinary day of election of county aldermen in the sixth calendar year next after the passing of the L.G.A. (L.G.A. s. 104, subs. 3, 4), *i.e.* on the 7th of November, 1894.



- CHAP. XVIII. In future years on the ordinary day of election of county aldermen in every third year, one half of the whole number of county aldermen shall go out of office, and their places shall be filled by election (M.C.A. s. 14, sub. 6). The half to go out shall be those who have been county aldermen for the longest time without re-election (*ib.* sub. 7).
- In future years.
- Re-eligibility. A person ceasing to hold a corporate office shall, unless disqualified to hold the office, be re-eligible (M.C.A. s. 37).
- Continuance in office. County aldermen shall, during their office, continue to be members of the county council, notwithstanding anything in the M.C.A. as to county councillors going out of office at the end of three years (M.C. A. s. 38 ; and see *Frost v. Mayor, etc., of Chester*, 5 E. & B. 531 ; *R. v. Owens*, 2 E. & E. 86).

## CHAPTER XIX.

CHAP. XIX.

## THE CHAIRMAN OF THE COUNTY COUNCIL.

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Voters . . . . .	"	Continuance in office . . . . .	"

THE chairman of the county council shall be a fit person elected by the county council from among the county aldermen or county councillors, or persons qualified to be such (M.C.A. s. 15, sub. 1), and an outgoing county alderman is eligible (*ib.* sub. 2). The words "persons qualified to be such," enable a qualified person to be elected from outside the county council, and thus to add one to the number of the county council. As to who are qualified to be county councillors, see *ante*, p. 17; and as to who are qualified to be county aldermen, see *ante*, p. 173.

The same persons are exempt from service as chairman of a county council as are exempt from service as county councillors, as to which, see *ante*, p. 47.

Exemption from Service.

The provisional councillors shall, at their first meeting, elect one of their number to be chairman of that meeting and of the second meeting (L.G.A. s. 105, sub. 3); and where an equal number of votes is given to two or more persons, the meeting shall determine by lot which of these persons shall be chairman (*ib.* s. 107, sub. 4). The person so elected is a mere temporary chairman selected

Chairman of the first meeting of the provisional councillors.

CHAP. XIX. — from the elected provisional councillors; he need not possess the qualification of a permanent chairman, and holds office merely during the first meeting and until a new chairman is elected by the county councillors and county aldermen at the second meeting.

Chairman of  
the second  
meeting.

The provisional council shall, at their second meeting, or some adjournment thereof, proceed to elect as their chairman a person qualified to be chairman of the county council, and the person elected chairman shall be chairman of the provisional council, and also, on and after the appointed day, of the county council (L.G.A. s. 105, sub. 4). The appointed day, is the 1st of April, 1889, or such other day, earlier or later, as the Local Government Board may appoint (*ib.* s. 109, sub. 1).

Casting vote.

In case of equality of votes at the first or second meeting of a provisional county council, the chairman of the meeting shall have a second or casting vote (L.G.A. s. 107, sub. 4). In future elections, in case of equality of votes, the chairman, although not entitled to vote in the first instance, shall have the casting vote (M.C.A. s. 61, sub. 4). This casting vote is given by word of mouth.

An outgoing chairman of a county council has an original as well as a casting vote in the election of chairman. He is a member of the county council (M.C.A. s. 10, sub. 2), and continues in office until his successor has accepted office (*ib.* s. 15, sub. 3): he is, therefore, at the time of election a member of the county council, and as such entitled to an original vote (*ib.* sch. II. r. 10). He, also, if presiding as chairman of the meeting, has a casting vote (*ib.* s. 61, sub. 4, and sch. II. r. 11). It is difficult to give effect to the words "although not entitled to vote in the first instance" (*ib.* s. 61, sub. 4), because it is impossible to imagine a chairman who has no original vote; but on comparing this sub-section with s. 60, sub. 6, and with 7 Will. IV., & 1 Vict. c. 78, s. 14, it seems clear that the sub-section (M.C.A. s. 61, sub. 4), was intended to be an enabling and not a disabling enactment.

The provisional council may from time to time fill any vacancy in the office of chairman of the provisional council (L.G.A. s. 105, sub. 4).

CHAP. XIX.

Filling up  
vacancy.

In future years the ordinary day of election of chairman of the county council shall be the 7th of November (M.C.A. s. 61, sub. 1; L.G.A. s. 75, sub. 13), and the election of such chairman shall be the first business transacted at the quarterly meeting of the county council held on that day (M.C.A. s. 61, sub. 2), at noon (*ib.* sch. II. r. 2). The election of chairman of the county council must precede that of county aldermen; if the latter precedes the former it is void, and no business inconsistent with this election can be transacted or discussed prior thereto (see *ante*, p. 174). As to who shall be the chairman of the meeting at these subsequent meetings, see M.C.A. sch. II. r. 9, and *ante*, p. 174.

Subsequent  
elections.

The persons voting are the members of the county council who are present at the meeting, not being less than one-third of the number of the whole county council (M.C.A. sch. II. r. 10), except that an outgoing county alderman shall not, *as alderman*, vote in the election of a chairman (L.G.A. s. 75, sub. 10) of the county council. This supersedes the contrary provision contained in M.C.A. s. 61, sub. 3. As to the effect of the above words "as alderman," see the remarks *ante*, p. 175, on the words "as such" in the corresponding provision (L.G.A. s. 2, sub. 2, *c*). A county alderman, who is not an outgoing alderman, can vote in the election of a chairman, although he cannot, as such, vote in the election of a county alderman (see *ante*, p. 175).

Voters.

When a  
county  
alderman can  
vote.

The provisions applicable where there is a failure to hold an election of a chairman of a county council are the same as in the case of a failure to hold an election of county aldermen, as to which, see *ante*, p. 178.

Failure to  
elect.

The term of office of the first chairman of the county council shall end on the next ordinary day of election of chairmen (L.G.A. s. 105, sub. 4) *i.e.* the 7th November, 1889, but he shall continue in office until his successor has accepted office and has made and subscribed the required declaration (M.C.A. s. 15, sub. 3). The term

Term of office.

CHAP. XIX. of office of the second and subsequent chairmen shall be one year (*ib.*). As to this declaration, see *post*, p. 186.

A chairman who is an outgoing councillor continues to be a member of the county council *ex officio*, and until his successor has taken office (*R. v. Owens*, 2 E. & E. 86).

Remuneration.

The chairman of the county council may receive such remuneration as the county council think reasonable (M.C.A. s. 15, sub. 4). This may be by salary, or by fixed sum voted at one time or from time to time, or in any other manner that the county council think reasonable.

Justice of the peace, *ex officio*.

The chairman of the county council shall, by virtue of his office, be a justice of the peace for the county, but before acting as such justice, he shall, if he has not already done so, take the oaths required by law to be taken by a justice of the peace, other than the oath respecting the qualification by estate (L.G.A. s. 2, sub. 5, *b*). These oaths are the oath of allegiance and the judicial oath (31 & 32 Vict. c. 72, s. 6), which oaths shall be taken before such persons as her Majesty may appoint (34 & 35 Vict. c. 48, s. 2). Under this statute, an order has been made (see Home Office circular, dated 25th November, 1882) appointing that these oaths may be taken by the mayor of any borough before two justices of the peace of such borough, or, if there are not two such justices, then before any two councillors of such borough. No similar order has yet been made in respect of chairmen of county councils, and there seems to be nothing in the L.G.A. to apply this order to that Act.

Precedence.

The chairman of the county council has no precedence in the county, M.C.A. s. 15, sub. 5, and s. 155, sub. 2, not being applied to the L.G.A. (see L.G.A. s. 75, and *ib.* sub. 16, *b*).

Re-eligibility.

A person ceasing to hold the office of chairman shall, unless disqualified to hold the office, be re-eligible (M.C.A. s. 37).

Continuance in office.

The chairman of the county council shall, during his office, continue to be a member of the county council,

notwithstanding anything in the M.C.A as to councillors going out of office at the end of three years (M.C.A. s. 38 ; and see *Frost v. Mayor, etc., of Chester*, 5 E. & B. 531 ; *R. v. Owens*, 2 E. & E. 86). CHAP. XIX.  
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Where the chairman of a county council is one of the county councillors who goes out of office on the 1st November, he causes a vacancy in the number of county councillors, although as chairman he continues a member of the county council until his successor has accepted office (*R. v. Owens*, 2 E. & E. 86).



## ACCEPTANCE AND RESIGNATION OF OFFICE AND LOSS OF QUALIFICATION.

### I. ACCEPTANCE OF OFFICE.

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### I. ACCEPTANCE OF OFFICE.

Declaration on acceptance. EVERY qualified person elected to the office of county councillor, county alderman, or chairman of the county council, unless exempt under M.C.A. s. 34, or otherwise by law, either shall accept the office by making and subscribing the declaration required by the M.C.A. within ten days after notice of election, or shall, in lieu thereof, be liable to pay to the county council a fine of such amount not exceeding, in case of a county alderman, or county councillor, fifty pounds ; and in case of a chairman of the county council, one hundred pounds, as the county council by bye-law determine (M.C.A. s. 34,

Fine for non-acceptance.

sub. 1 ; L.G.A. s. 75, sub. 14). If there is no bye-law determining fines, the fine, in case of a county alderman or county councillor, shall be twenty-five pounds, and, in case of a chairman of the county council, fifty pounds (M.C.A. s. 34, sub. 2). The fine is recoverable summarily (*ib.* sub. 4) ; and nothing in the M.C.A. as applied by L.G.A. s. 75 shall alter the application of the fine (L.G.A. s. 75, sub. 16, *a*). A bye-law may fix a nominal sum as the fine.

As to who is qualified to be elected to the office of county councillor, see *ante*, p. 17 ; as to who is qualified to be elected to the office of county alderman or chairman of the county council, see *ante*, pp. 173, 181 ; and as to who are exempt, see *ante*, pp. 47, 181.

The form of declaration is Form A in M.C.A. sch. VIII., and No. 6, *post*, p. 233. The declaration must state the property or rating qualification in cases where the declarant is elected as a person entered on the non-resident list (see *ante*, pp. 22, 23), and the property qualification where he is elected as a peer or registered parliamentary voter (see *ante*, pp. 18, 19). The declaration must be made and subscribed before two members of the county council, or the clerk of the county council, and, until so made and subscribed, no person elected to any of the above offices can act in the office to which he is elected, except in administering that declaration (M.C.A. s. 35 ; L.G.A. s. 75, sub. 5). The two members of council, or the clerk of the county council, before whom the declaration is made, have full authority to receive and administer the same (M.C.A. s. 239). But they may refuse to receive or administer the declaration, if satisfied of the disqualification of the person applying to make it, and they cannot, under such circumstances, be compelled by mandamus to receive or administer it (*R. v. Greene*, 2 Q. B. 460). There is nothing which requires the declaration to be made and subscribed within the limits of the county, and it may therefore be made and subscribed anywhere.

Taking the  
declaration.

Sundays are included in calculating the above ten days, but if the last day falls on a Sunday, the

Limit of time.

CHAP. XX. declaration may be made and subscribed on the following day, not being a day of public fast, etc. (M.C.A. s. 230, subs. 2, 3). It is submitted that the limit of ten days is not mandatory or absolute, and that the person may make and subscribe the declaration after the ten days have expired, if he does so before payment of the fine has been enforced, and before any notice of the vacancy has been given under M.C.A. s. 66, sub. 1 (see *R. v. Preece*, 5 Q. B. 94, and see M.C.A. s. 41, sub. 1, *post*, p. 189).

Notice of election.

The notice which a person must receive before he is brought within the above provision is notice acquired, either by being actually present when his election is announced, or by being apprised of the fact by some official authority ; mere casual information is insufficient (*R. v. Preece*, 5 Q. B. 97). Such a notice will, at the first election, be given by the returning officer (L.G.A. s. 103, sub. 5 ; and see *ante*, p. 109) ; and in future elections such a notice should be given by the clerk to the county council as soon as he is apprised of the person's election.

Persons exempt from the fine.

A person elected, but not qualified (*R. v. Richmond*, 11 W. R. 65) ; a person nominated without his consent being previously obtained (L.G.A. s. 75, sub., 16, c) ; a person enabled by law to make an affirmation instead of taking an oath, and who refuses on conscientious grounds to make the above declaration, or to take upon himself the duties of the office (M.C.A. s. 36, sub. 3) ; and *semble* a person who accepts another office and so vacates the office he held at the time of such acceptance (per Lindley, L.J., in *R. v. Mayor, etc., of Bangor*, 18 Q. B. D. 366)—are not liable to the above fine.

Exemption from service by reason of payment of fine.

A person who elects to pay the fine in lieu of accepting office is exempt for five years from the day of his election from liability to serve in the same office (M.C.A. s. 34, sub. 2, b) ; moreover, he cannot be compelled by mandamus to serve (*cf. R. v. Bower*, 1 B. & C. 585), or indicted at common law, nor can a criminal information be preferred against him for not serving.

—  
Acting in the  
office without  
first making  
the de-  
claration.

If any person acts in the office of county councillor, county alderman, or chairman of the county council without having made the above-mentioned declaration, or without being qualified at the time of making that declaration (see *ante*, pp. 17, 173, 181), or after ceasing to be qualified (see *post*, p. 192), or after becoming disqualified (see *post*, p. 193), he shall for each offence be liable to a fine not exceeding fifty pounds, recoverable by action (M.C.A. s. 41, sub. 1). If a member of the county council becomes disqualified by having a share or interest in a contract with the county council (see *Le Feuvre v. Lankester*, 3 E. & B. 530, and *ante*, p. 42), but does not *act* during the continuance of the contract, he does not render himself liable to the above fine (*Lewis v. Carr*, 1 Ex. D. 484). And a person being in fact enrolled in the burgess roll, or registered in the register of county electors, shall not be liable to the above fine on the ground only that he was not entitled to be enrolled or registered therein (M.C.A. s. 41, sub. 2); nor shall his election be liable to be questioned by reason of a defect in the title, or want of title, of the person before whom the election was had, if that person was then in actual possession of, or acting in, the office giving the right to preside at the election (*ib.* s. 42, sub. 2); nor shall a burgess roll or register of county electors be liable to be questioned by reason of a defect in the title, or want of title, of the revising authority by whom it was revised, if he was then in actual possession and exercise of the office of revising authority (*ib.* sub. 3).

The action for the last-named fine can only be brought by a burgess or county elector (as the case may be); notice of action must be served personally on the intended defendant within fourteen days after the cause of action arose; the action must be commenced within three months after the cause of action arose (M.C.A. s. 224, sub. 1); within fourteen days after service of the writ the plaintiff may be required to give security for costs (*ib.* sub. 2); unless the plaintiff recovers judgment the defendant is entitled to costs as between solicitor

Action for  
the fine.

CHAP. XX. — and client (*ib.* sub. 3) ; if the action is brought on the ground of the defendant not being qualified in respect of estate, it lies on him to prove that he was so qualified (*ib.* sub. 4) ; and a moiety of the fine recovered shall, after payment of the costs of the action, be paid to the plaintiff (*ib.* sub. 5) ; and see, as to the other moiety, *ante*, p. 150.

## II. RESIGNATION OF OFFICE..

Notice of  
resignation.

A person elected to the office of county councillor, county alderman, or chairman of the county council, may, at any time, by writing signed by him, and delivered to the clerk of the county council, resign the office, on payment of the fine provided for non-acceptance thereof (M.C.A. s. 36, sub. 1).

Fine on  
resignation.

Who can  
resign.

“ At any time ” means at any time when the person is capable of holding, and therefore of resigning, the office ; a person who is disqualified from holding, *e.g.* by bankruptcy, is incapable of resigning (*Hardwick v. Brown*, L. R. 8 C. P. 406). Again, a man cannot resign that to which he is not entitled, and which he has no right to occupy, and resignation implies that the person resigning has been elected into the office which he resigns (*R. v. Blizard*, L. R. 2 Q. B. 57). Therefore, where a relator on a quo warranto claims the office, resignation, whether before or after he applies for the quo warranto, is no answer to the proceedings ; for the relator is entitled to proceed to judgment of ouster, or until a disclaimer is entered, and so to a mandamus to be admitted to the office which he claims (*ib.*).

When re-  
signation is  
complete.

The resignation is not complete until the writing has been delivered *and* the fine has been paid, but the clerk of the county council should receive the notice, even though it be unaccompanied by the fine, and although it is incomplete without the fine. If not paid, the county council can perhaps enforce payment of the fine ; but not, it would seem, by summary proceedings, sub. 4 of M.C.A. s. 34, not being re-enacted or applied to s. 36.



The county council have no power to waive payment of, or to remit, the fine. But *semble* a person who resigns one office in order to accept another, is not liable to the fine (per Lindley, L.J., in *R. v. Mayor, etc., of Bangor*, 18 Q. B. D. 366). CHAP. XX.

Acceptance by the county council of the resignation is not requisite, and the resignation once completed cannot be withdrawn, even though the county council are willing to assent to such withdrawal (*R. v. Mayor, etc., of Wigan*, 14 Q. B. D. 908). Whether, if the writing has been delivered, and the fine paid, by mistake or inadvertence, the resignation can be withdrawn before it has been acted upon, and before any one has altered his position in consequence thereof, is an undecided question (*ib.*). Withdrawing  
resignation.

Although the resignation is complete on delivery of the writing and payment of the fine, the office is not vacant until the county council have declared it to be vacant, and have signified the same by notice in writing, signed by three members of the county council, and countersigned by the clerk of the county council, and fixed on the town hall (M.C.A. s. 36, sub. 2). This the county council shall do forthwith on the resignation being sent in and the fine paid (*ib.*); but, until the resignation has been sent in and the fine has been paid, the office cannot be declared to be vacant. The council "declare" the office to be vacant, by resolution duly passed and entered in the minute book. The intended resolution must therefore be specified in the summons calling the council meeting, which summons must be left or delivered by post in a registered letter at the usual place of abode of every member of the county council, three clear days at least before the meeting (M.C.A. sch. II. r. 6), and the time and place of the intended council meeting must also be duly notified on the town hall (*ib.* r. 5). The resolution must also be passed by a majority of the members of the county council, present and voting at the meeting, and the whole number present, whether voting or not, must not be less than one third of the number of the whole Declaring the  
office vacant.



CHAP. XX. council (*ib.* r. 10). The notice may be partly in writing and partly in print (L.G.A. s. 99); and the name and address of the printer and publisher of the notice should appear on the face thereof (M.E.C.I.P.A. s. 14). The three members signing may be any three, but are usually three of those present at the meeting at which the declaration is made. The notice may be fixed on some conspicuous place on or near the outer door of the town hall, and in some conspicuous place in the electoral division (M.C.A. s. 232).

### III. LOSS OF QUALIFICATION.

Fine for acting  
when dis-  
qualified.

A person may lose the qualification upon which he was elected, and all other qualifications by which he might be elected or act, and he may also become expressly disqualified. In any such case, he should thereupon immediately cease to act; for if any person acts in the office of county councillor, county alderman, or chairman of the county council after ceasing to be qualified, or after becoming disqualified, he shall for each offence be liable to a fine not exceeding fifty pounds, recoverable by action (M.C.A. s. 41, sub. 1). As to the recovery of the fine, see *ante*, p. 189.

Cesser of  
registration.

If a county councillor or county alderman who qualified under M.C.A., s. 11, sub. 2, as applied by L.G.A., ss. 2, 75 (*i.e.* as a person registered or enrolled, and entitled to be registered or enrolled, as a county elector or burgess), ceases to be on that register or burgess roll, he immediately ceases to be a county councillor or county alderman.

Cesser of  
residence.

Again, if a county councillor or county alderman, who qualified under M.C.A. s. 11, sub. 3, as applied by L.G.A. ss. 2, 75 (*i.e.* as a person who at the time of election was qualified to elect), ceases for six months to reside in the county, and was not at the time of his election, and is not, qualified in any other manner, he ceases to be so qualified, and his office becomes vacant (M.C.A. s. 11, sub. 4). As to what is residence, see

*ante*, p. 31. The office becomes vacant at the expiration of the six months, and without any declaration of the county council; but the question of when the person first "ceases to reside" is often a question of some difficulty. Thus, if a county councillor disposes of his business, and goes with his family to live away from the county, but does not remove his furniture, which he retains in his former residence in the county, he cannot, it is submitted, be said to have ceased to reside in the county.

Again, if a county councillor, county alderman, or chairman of the county council:—

Bankruptcy,  
&c., and  
continuous  
absence.

(a.) Is declared bankrupt, or compounds by deed with his creditors, or makes an arrangement or composition with his creditors, under the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52, s. 149, sub. 2), by deed or otherwise; or

(b.) Is (except in case of illness) continually absent from the county, being county alderman or county councillor, for more than twelve months; he shall thereupon immediately become disqualified, and shall cease to hold office (M.C.A. s. 39, sub. 1; L.G.A. s. 75, sub. 14). But a chairman is not disqualified, as such, by reason of absence (L.G.A. s. 75, sub. 16, c.).

These provisions are in the nature of penal enactments, and are to be strictly construed (see *Aslatt v. Corporation of Southampton*, 16 Ch. D. 143). A private composition, not by deed, is not within the section (*ib.*); nor yet a deed of arrangement under the Deeds of Arrangement Act, 1887, unless it is under seal; nor yet a mere assignment for the benefit of creditors (see *R. v. Cooban*, 18 Q. B. D. 269). It is submitted that the deed must be a valid deed, and that, if registration is essential to its validity (as under the Deeds of Arrangement Act, 1887), it is not a deed within the above section of the M.C.A. until such registration has been effected.

The composition or arrangement, if under the Bankruptcy Act, 1883, may be by deed *or otherwise*; the disqualification arises as soon as the composition or arrangement has become effective.

- CHAP. XX. The above disqualification by reason of bankruptcy, etc., as regards subsequent elections, ceases on the person obtaining his discharge or payment of his debts in full (M.C.A. s. 39, sub. 3; and see *R. v. Mayor, etc., of Welchpool*, 35 L. T. 594; *ex parte Atherton*, 2 T. L. R. 631). A person who compounds with his creditors does not pay his debts in full (*Hardwick v. Brown*, L. R. 8 C. P. 406; and see *Fletcher v. Saunders*, 49 J. P., 424).
- Cesser of disqualification. Under the Bankruptcy Act, 1883, if a person is adjudged bankrupt while holding the office of mayor, alderman, or councillor, his office shall thereupon become vacant (46 & 47 Vict. c. 52, s. 34), and such vacancy is complete without any declaration by the council. But, unless this can be deemed to be an enactment amending the M.C.A., it is not applied to county councils (see L.G.A. s. 75).
- Provision in Bankruptcy Act, 1883.
- Continuous absence. A person who has ceased to reside in the county but occasionally comes there on business is not, it is submitted, "continuously absent" within the meaning of the above enactment.
- Fine. Where a person becomes disqualified, as above mentioned, by absence, he shall be liable to the same fine as for non-acceptance of office, recoverable summarily, but the disqualification shall, as regards subsequent elections, cease on his return (M.C.A. s. 39, sub. 4). As to what is the fine for non-acceptance of office, see *ante*, p. 186. A county councillor or county alderman, who loses his qualification by reason of continuous absence under M.C.A. s. 39, sub. 1, *b*, before he has lost it by reason of cesser of residence under *ib.* s. 11, sub. 4, becomes liable to the fine under *ib.* s. 39, sub. 4.
- Declaring the office vacant. In any of the last mentioned events the county council shall forthwith declare the office to be vacant, and signify the same by notice signed by three members of the council, and countersigned by the clerk to the county council, and fixed on the town hall, and the office shall thereupon become vacant (M.C.A. s. 39, sub. 2). The vacancy is not complete until the whole of these acts have been completed; and if, instead of declaring the office to be vacant, the county council do nothing, and

the disqualification of the county councillor ceases, and he is subsequently re-elected for a further term of office on a new election, the office is full, and it is then too late for the county council to declare the office lately held by the county councillor to be vacant (*R. v. Mayor, etc., of Welchpool*, 35 L. T. 595). The notice must be fixed in some conspicuous place on or near the outer door of the town hall, or, if there is no town hall, in some conspicuous place in the electoral division (M.C.A. s. 232); it may be partly in writing and partly in print (L.G.A. s. 99); and the name and address of the printer and publisher thereof should appear on the face thereof (M.E.C.I.P.A. s. 14).

The acts and proceedings of a person in possession of the office of county councillor, county alderman, or chairman of the county council, and acting therein, shall, notwithstanding his disqualification or want of qualification, be as valid and effectual as if he had been qualified (M.C.A. s. 42, sub. 1); so also if he is unseated by an election court or by the High Court (*ib.* s. 102).

The title to office of a person who is not duly qualified is questioned by election petition (as to which, see Chap. xxiv. *post*, p. 211) if he did not possess a qualification at the time of election; and by quo warranto (as to which see Chap. xxiv. *post*, p. 219) if he has lost his qualification since election.

Validity of  
acts of person  
in office.

Contesting the  
qualification.

## CASUAL VACANCIES.

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<i>election</i> . . . . .	197	<i>Casual vacancies at first election</i> „	
<i>Time of election</i> . . . . .	„		

How a casual vacancy arises. A CASUAL vacancy may arise in the office of county councillor, county alderman, or chairman of the county council, by reason of :—

1. Death.
2. Resignation (see *ante*, p. 190).
3. Bankruptcy, composition, or arrangement (see *ante*, p. 193).
4. Continuous absence (see *ante*, pp. 193, 194).
5. Avoidance of election on election petition (M.C.A. s. 103 ; Rules 1883, r. 47).
6. Cesser of registration as elector (see *ante*, p. 192).
7. Cesser of residence (see *ante*, p. 192).

Election, how and by whom.  
Term of office of person elected.

On a casual vacancy, an election shall be held by the same persons and in the same manner as an election to fill an ordinary vacancy ; and the person elected shall hold the office until the time when the person in whose place he is elected would regularly have gone out of office, and he shall then go out of office (M.C.A. s. 40, sub. 1). Therefore, where an election is held to supply a casual vacancy on the same day as an election held to supply an ordinary vacancy, care should be taken that, in the notice of the election, ballot papers, notice of persons nominated, etc., a distinction is preserved

between the two vacancies and classes of candidates, so that it may appear who is to fill the casual, and who the ordinary vacancy (see *R. v. Rowley*, 3 Q. B. 143 ; in error, 6 Q. B. 668). CHAP. XXI.

In case of more than one casual vacancy in the office of county councillor being filled at the same election, the county councillor elected by the smallest number of votes shall be deemed to be elected in the place of him who would regularly have first gone out of office, and the county councillor elected by the next smallest number of votes shall be deemed to be elected in the place of him who would regularly have next gone out of office, and so with respect to the others ; and if there has not been a contested election, or if any doubt arises, the order of rotation shall be determined by the county council (M.C.A. s. 40, sub. 2), *i.e.* by the majority present and voting at a duly convened meeting, the whole number present not being less than one-third of the number of the whole county council (*ib.* sch. II. r. 10 ; and see *ante*, p. 191). Several vacancies filled at one election.

On a casual vacancy, the election shall be held within fourteen days after notice in writing of the vacancy has been given to the chairman or clerk of the county council, by two electors (M.C.A. s. 66, sub. 1.). "Within fourteen days after" is to be reckoned inclusive of the day of election, and exclusive of the day of giving the notice ; and the nine days' notice of election must therefore be given within five days after the above notice of vacancy is given, or the election will not be held within the above fourteen days. Time of election.

Where the office vacant is that of chairman of the county council, the notice of the meeting for the election shall be signed by the returning officer or his deputy (M.C.A. s. 66, sub. 2 ; L.G.A. s. 75, sub. 5). In other cases the day of election shall be fixed by the chairman of the county council (M.C.A. s. 66, sub. 3). But the notice of the election must in this case also be signed, it would seem, by the returning officer or his deputy. The words "meeting for the" are superfluous ; the meeting is the meeting of the electors, and it would have been sufficient Notice of election.



CHAP. XXI. had the phrase run, "the notice of election shall be signed," etc.

Election not to be held within six months of ordinary day of election.

A returning officer is not authorised or required to hold an election of a councillor to fill a casual vacancy in the representation of an electoral division, where the vacancy occurs within six months before the time fixed by the L.G.A. for a new election of a councillor to represent such electoral division (L.G.A. s. 75, sub. 16, *d*).

Casual vacancies at first election.

Any casual vacancy arising at the first election from a person being elected for more than one electoral division, or being elected a county alderman, or from a failure of election or otherwise, may be filled in like manner as a casual vacancy in the county council may be filled, and the sheriff or other officer authorised to act as returning officer at the first election shall be the returning officer at any election held to fill a casual vacancy before the appointed day (L.G.A. s. 107, sub. 2). The manner in which a casual vacancy in the county council is filled is the manner prescribed by the enactments previously discussed in this chapter, and applying to casual vacancies arising after the county council is fully constituted.

## CHAPTER XXII.

CHAP. XXII.

CORRUPT AND ILLEGAL PRACTICES AND  
AGENCY.

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<i>Extensive illegal practices</i>	. „		<i>Particular illegal practices</i>	. „

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A LOCAL government election shall be wholly avoided by such general corruption, bribery, treating, or intimidation at the election as would by the common law of parliament avoid a parliamentary election (M.C.A. s. 81). General  
corrupt  
practices.

Where upon the trial of an election petition respecting a local government election for a county, or an electoral division of a county, it is found by the election court that illegal practices or offences of illegal payment, employment, or hiring, committed in reference to such election for the purpose of promoting the election of a candidate at that election, have so extensively prevailed that they may be reasonably supposed to have affected the result of that election, the election court shall report such finding to the High Court, and the election of such candidate, if he has been elected, shall be void (M.E.C.I.P.A. s. 18). Extensive  
illegal  
practices.

The statutory enactments defining corrupt practices, viz. bribery, treating, undue influence, and personation, are the same in a local government election as in a parliamentary election, and are incorporated into the M.C.A. and thus into the L.G.A. (M.E.C.I.P.A. s. 2, sub. 1; and see M.C.A. ss. 77, 86). The enactments relating to illegal practices, and illegal payment, employment, and hiring are also substantially the same as in Particular  
corrupt  
practices.  
  
Particular  
illegal  
practices.

CHAP. XXII. a parliamentary election (M.E.C.I.P.A. ss. 4-17). The consequences of the commission of either are similar to those in a parliamentary election.

The leading principles of the law affecting corrupt practices and electoral agency are well known, and the principal illegal practices have been discussed in their appropriate places in this book. For further information on either subject the reader is referred to the Election Agent, chaps. xxv. xxvi.

## CHAPTER XXIII.

## CHAP. XXIII.

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THE severity of many of the provisions of the M.E.C.I.P.A. has been moderated by the power which the Act gives to the courts of awarding relief, in many cases, to an innocent candidate or other person, against the consequences of acts in which they have not participated, or which are due merely to inadvertence. There is no

CHAP. XXIII. — power to grant relief against an act of bribery or personation, but with these exceptions this power of awarding relief extends to all other classes of electoral offences.

The relief which can be granted on the trial of an election petition in respect of trivial acts of treating, undue influence, or illegal practices, and also in respect of the illegal practices of paying claims sent in after the time limited for sending in claims, and of paying claims after the time limited for paying claims, are dealt with in the next chapter, *post*, p. 216. The present chapter is confined to those cases in which the dispensing power may be exercised before an election petition is filed, or independently of any such petition.

## I. ILLEGAL PRACTICE, PAYMENT, EMPLOYMENT, OR HIRING.

Circumstances under which application may be made. Where any act or omission of a candidate, or of any agent or other person, would, by reason of being in contravention of any of the provisions of the M.E.C.I.P.A., be an illegal practice, payment, employment, or hiring, then, if the act or omission arose from inadvertence, accidental miscalculation, or some other reasonable cause of a like nature, and not from any want of good faith, an order may be obtained from the High Court or the election court, allowing such act or omission to be an exception from the provisions of the Act, and exempting the candidate, agent, or person from the consequences of the act or omission (M.E.C.I.P.A. s. 20). It will be observed that this section does not authorise the granting of relief in respect of any corrupt practice ; nor in respect of any act which is wrong in itself ; also that the candidate, or other applicant, *and* the person by whom the act or omission was done must be in no sense guilty of *mala fides* ; and that the power to grant this relief extends to the acts of any agent or person.

To and by whom made. The application may be made to the High Court or the election court, and may be made by the candidate,

agent, or other person endangered by the act or omission CHAP. XXIII.  
in question (M.E.C.I.P.A. s. 20).

The application may be made at any time, and if made When to be made.  
as soon as the act or omission is discovered, or immediately after the declaration of the result of the election, it may save a successful candidate from an election petition. If made by or on behalf of a successful candidate, it must be made previously to the report of the election court, or his seat will be gone (see M.E.C.I.P.A. s. 8).

The application is made by motion to the court, or by How made.  
application to the judge in chambers, and is, in either case, made *ex parte*, after notice. If proper notice has been given, and if the evidence is sufficient to bring the case within the Act, the court disposes of the application at once ; but, if such is not the case, it usually directs that the application be renewed after proper notice has been given (*South Shropshire*, 34 W. R. 352), or further evidence has been obtained (*re Terry & Wharton*, 1 T. L. R. 183).

Such notice of the application must be given in the Notice.  
county or electoral division for which the election was held as to the court seems fit (M.E.C.I.P.A. s. 20). It is usual to give written notice to each of the candidates at the election, to the returning officer, and to the constituency by advertisement (*South Shropshire*, 34 W. R. 352 ; *re Hart*, 2 T. L. R. 24) ; and in one of the first cases the court required notice to be given by conspicuous posters throughout the constituency (*re Terry & Wharton*, 1 T. L. R. 183). If the application is made during the trial of an election petition, notice given by counsel orally in open court has been held to be sufficient (*Norwich*, 4 O'M. & H. 89).

The affidavits or Evidence.  
oral evidence in support of the application must show :—(a) the nature of the act or omission, and that it amounts to an illegal practice, payment, employment, or hiring ; (b) that such act or omission arose from inadvertence, or accidental miscalculation, or some other reasonable cause of a like nature, and not from any want of good faith ; (c) that sufficient notice of the



CHAP. XXIII. application has been given in the constituency ; and  
 — (d) that it is just that the candidate, agent, and person, or any of them, should not be subject to the consequences of such act or omission (see M.E.C.I.P.A. s. 20). The evidence must bring the case clearly within the Act, or the relief will not be granted (*ex parte Clark*, 52 L. T. 260) ; and, if “inadvertence” be the foundation of the application, this must be satisfactorily explained and established (*South West Essex*, 2 T. L. R. 388). “Inadvertence” is a lack of heedfulness or attentiveness, an oversight, mistake, or fault which proceeds from negligence of thought (Webster’s Dictionary) ; it is an occasional act which must not be too often repeated or it becomes inattention (Crabb’s Synonymes) ; but to act on a particular view of the law is not inadvertence (*South West Essex*, 2 T. L. R. 388 ; but see *Stepney*, 4 O.M. & H. 53, *per* Denman, J.). The fact that the contest was severe is not a ground for allowing payments in excess of any maximum (*ex parte Ayrton*, 2 T. L. R. 215).

Hearing.

A candidate (*ex parte Wilks*, 16 Q. B. D. 114 ; *Chelsea*, 2 T. L. R. 374) ; the returning officer (*South West Essex* 2 T. L. R. 388 ; *Wigan*, *ib.* 159) ; or a voter (*Wigan*, 2 T. L. R. 159) ; may appear to consent or oppose ; and, if his opposition is founded on facts not appearing on the evidence filed in support of the application, he should be prepared with proper affidavits, or oral evidence of such facts (see *ex parte Wilks*, 16 Q. B. D. 114). If an election petition be pending, the application may be ordered to stand over until after the trial of the petition, or may be referred to the election court ; if a prosecution is threatened or pending, the court will generally decline to interfere (*South West Essex*, 2 T. L. R. 388) ; but may sometimes be induced to do so (*ex parte Clark*, 52 L. T. 260).

Order and its effect.

The court, if it deems the evidence sufficient, and the circumstances such that it is just that the candidate, agent, and person, or any of them, should not be subject to the consequences of the act or omission in question, may make an order allowing the act or omission to be an exception from the provisions of the M.E.C.I.P.A. and

thereupon the candidate, agent, or person shall not be subject to any of the consequences under the Act of such act or omission (M.E.C.I.P.A. s. 20). A form of order is given in *ex parte Clark*, 52 L. T. 263. The order does not seem to relate back so as to take away any consequences that have already ensued. CHAP. XXIII.

There is an appeal from the judge in chambers to the divisional court (*Chelsea*, 2 T. L. R. 374); and thence to the Court of Appeal.

Relief has been granted in respect of circulars of thanks ordered by the candidate after the election was over, and paid for by his clerk without authority, instead of through the election agent (*Lincoln*, 25 July, 1884, not reported; it is submitted that this is not an election expense, see *ante*, p. 157, and that consequently the application was unnecessary); in respect of a municipal election meeting held in a prohibited room (*re Terry & Wharton*, 1 T. L. R. 183; *re Hart*, 2 *ib.* 24); in respect of placards printed and circulated without the printer's name (*ex parte Clark*, 52 L. T. 260; the court included the printer in its order, though there appears to be no power to do so, his offence not being an illegal practice, payment, employment, or hiring, see *ante*, p. 82); and in respect of expenses for bill posting incurred under special circumstances, and causing the maximum allowance to be exceeded by £97 (*ex parte Ayrton*, 2 T. L. R. 215). There was no opposition in any of the above cases. The courts have in more than one case stated that as the Act becomes better known they will be less indulgent in granting relief (*ex parte Mathews*, 2 T. L. R. 548; and see *ex parte Clark*, 1 T. L. R. 243; *ex parte Ayrton*, 2 T. L. R. 214).

Permission to pay for a brougham ordered and used by a candidate's clerk without authority, for the purposes of the election, but not for the conveyance of voters to the poll, has been refused (*Chelsea*, 2 T. L. R. 374); an application for relief in respect of posters circulated without the printer's name has been ordered to stand over until after the trial of an election petition presented against the applicant (*ex parte Wilks*, 16 Q. B. D. 114);

Applications  
which have  
been granted.

Applications  
which have  
been refused.

CHAP. XXIII. and relief has been refused to a sub-agent who had voted and had subsequently received payment for his services, (*South West Essex*, 2 T. L. R. 388). Cause was shown against the application in each of the above cases.

## II. RETURN AND DECLARATION AS TO ELECTION EXPENSES.

**Circumstances under which application may be made.** Where the return and declaration respecting election expenses have not been made as required by the M.E.C.I.P.A. (see *ante*, p. 164), or, being made, contain some error or false statement, an application may be made for relief, in the Act called "the allowance of an authorised excuse" (M.E.C.I.P.A. s. 21, sub. 4). The power to grant this relief is not, like that under the previous head, confined to cases of default from inadvertence, accidental miscalculation, or other reasonable cause, but extends to cases of default, error, and false statement caused by the misconduct of an agent or other person, though none but innocent parties can get relief.

**By and to whom made.** The application may be made by the candidate to the High Court or to the election court (M.E.C.I.P.A. s. 21, sub. 7).

**When to be made.** The application may be made at any time, and if made as soon as the default is discovered, it may save a successful candidate from an election petition; if made by or on behalf of such a candidate, it must be made before the report of the election court, or the seat will not be saved.

**How made and notice.** The application is made in the same manner, and after similar notice has been given, as under the first head (*ante*, p. 203).

**Evidence.** The evidence in support of the application is usually given by affidavits, and must show:—(a) the nature of the failure or error in question; (b) that it arose by reason of the applicant's illness or absence; or by reason of the absence, death, illness, or misconduct of any agent, clerk, or officer (see *Ipswich*, 3 T. L. R. 397); or by reason of inadvertence, or of any reasonable cause of a

like nature, *and* not by reason of any want of good faith CHAP. XXIII. on the part of the applicant ; (c) that the application is made in good faith ; and (d) that sufficient notice of the application has been given in the constituency (M.E.C.I.P.A. s. 21, sub. 7).

The parties to be heard in opposition to the applica- Hearing. tion are substantially the same as in the case of an application made under the first head (see *ante*, p. 204).

The court *may* make such order for the allowance of Order and terms. an authorized excuse for the failure to make the return and declaration, or for the error or false statement therein, as to the court seems just (M.E.C.I.P.A. s. 21, sub. 7). The order may be conditional upon compliance with such terms as to the court seems calculated for carrying into effect the objects of the Act (*ib.* sub. 8.).

The order relieves the candidate from liability to the Effect of order. penalty for sitting and voting in the county council where the return and declaration have not been made in due time (M.E.C.I.P.A. s. 21, sub. 4, and see further hereon, *ante*, p. 164) ; and it also relieves the candidate from the illegal practice (*ib.* sub. 5), which ensues from the non-compliance with the statutory requirements as to the return and declaration respecting election expenses (see *ante*, p. 164). The date of the order, or, if conditions and terms are to be complied with, the date at which the applicant fully complies with such conditions and terms, is the date of the allowance of the excuse (M.E.C.I.P.A. s. 21, sub. 9).

Relief has been granted in respect of a return of Applications which have been granted. election expenses not sent in in due time (*Wigan*, 2 T. L. R. 159 ; *ex parte Darkin*, Times newspaper 17 Dec. 1885) ; not accompanied by bills and vouchers (*Birmingham*, Times newspaper, 15 March 1888) ; not sent in at all (*ex parte Matthews*, 2 T. L. R. 548 ; *ex parte Robson*, 18 Q. B. D. 336) ; and sent in after a delay of six months (*ex parte Walker*, Times newspaper, 11 Feb. 1887).

## CHAP. XXIII.

III. EXCESS OF EXPENDITURE BY REASON  
OF JOINT CANDIDATURE.

Circumstances under which application may be made. Where any excess of expenses above the maximum allowed for one of two or more joint candidates has arisen owing to his having ceased to be a joint candidate, or to his having become a joint candidate after having begun to conduct his election as a separate candidate, an order may, on a proper application and on proper evidence, be obtained, relieving the candidate from the consequences of having incurred such excess of expenses (M.E.C.I.P.A. s. 5, sub. 4, *c*).

When, and how made. The application may be made to the same tribunals, and in the same time and manner as an application to except an innocent act from being an illegal practice, etc. (*ib.* and see *ante*, p. 203).

Evidence. The evidence in support of the application is usually given by affidavit, and must show :—(*a*) that an excess of expenditure above the maximum allowed has arisen ; (*b*) that such excess has arisen from the candidate having ceased to be a joint candidate, or from his having become a joint candidate after having begun to conduct his election as a separate candidate ; (*c*) that such ceasing or beginning was in good faith ; (*d*) that such excess is not more than under the circumstances is reasonable ; and (*e*) that the total expenses of such candidate do not exceed the maximum amount allowed for a separate candidate (M.E.C.I.P.A. s. 5, sub. 4, *c*). This evidence being given, the excess shall be deemed to have arisen from a “reasonable cause,” within the meaning of the Act (*ib.*).

Order and its effect. The order may be made as in the case of an application under the first head (*ante*, p. 204), and upon its being made the candidate is relieved from the consequences of having incurred such excess of expenses (M.E.C.I.P.A. s. 5, sub. 4, *c*).

## IV. CLAIMS SENT IN LATE OR NOT PAID IN TIME.

Where a claim has been sent in after, or any election expense has not been paid within, the time limited for those purposes (see *ante*, pp. 161, 162), application may be made to the county court for the district in which the election was held, or to the High Court, or to an election court, for an order allowing such claim to be sent in, or expense to be paid (M.E.C.I.P.A. s. 21, sub. 6). Circumstance under which application may be made.

There is no time limited within which the application is to be made; it should therefore be made within a seasonable time, and as soon as practicable. When to be made.

The application may be made by the candidate, or creditor (M.E.C.I.P.A. s. 21, sub. 6). By whom made.

Notice of the intended application does not appear to be requisite (*cf.* M.E.C.I.P.A. ss. 20, 21, sub. 7; s. 5, sub. 4, *c*); but notice in the manner mentioned *ante*, p. 203, has been given in all cases in which relief has hitherto been granted. Notice.

A return of any sum so paid shall forthwith after payment be sent to the clerk of the county council (M.E.C.I.P.A. s. 21, sub. 6; L.G.A. s. 75, sub. 5). Return of sums paid.

Permission to pay the charges of certain sub-agents after the proper time for payment had elapsed (*South Shropshire*, 2 T. L. R. 347), and for leave to pay a disputed claim (*Lowestoft*, 4 T. L. R. 38) have been granted; but permission to an election agent to pay a claim for a committee-room sent in after the proper time, he admitting the hiring and desiring to pay the claim, has been refused (*Lincoln*, 25th July, 1884, not reported). Applications which have been granted and refused.



## ELECTION PETITION AND QUO WARRANTO.

## I. ELECTION PETITION.

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I. ELECTION PETITION.

A LOCAL government election may be questioned by an election petition on the ground :—

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 GROUNDS FOR  
 PETITION.

- (a.) That the election was wholly avoided by general bribery, treating, undue influence, or personation ; or
- (b.) That the election was avoided by corrupt practices, or offences against M.C.A. part IV. committed at the election ; or
- (c.) That the person whose election is questioned was at the time of election disqualified ; or
- (d.) That he was not duly elected by a majority of lawful votes (M.C.A. s. 87, sub. 1) ; or
- (e.) That the election was avoided by illegal practices (M.E.C.I.P.A. ss. 8, 25) ; or
- (f.) That the returning officer has erroneously allowed an objection to a nomination paper (M.C.A. sch. III. pt. II. r. 14) ; or
- (g.) That the returning officer's decision of a question arising in respect of a ballot paper was erroneous (B.A. s. 2).

An election petition presented to the High Court of Justice on any ground other than that of illegal practices shall be presented within twenty-one days after the day on which the election was held, except that if it complains of corrupt practices, and specifically alleges that a payment of money or other reward has been made or promised since the election by a person elected at the election or on his account or with his privity, in pursuance or furtherance of such corrupt practices, the petition may be presented within twenty-eight days after the date of such payment or promise (M.C.A. s. 88, sub. 4; and see *Kidderminster*, 2 O'M. & H. 172; *Galway*, 1 *ib.* 304).

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 TIME FOR  
 PRESENTA-  
 TION.

—  

 Corrupt  
 practices.

After return.

Where the petition alleges illegal practices, it may be presented at any time before the expiration of fourteen days after the day on which the clerk of the county council receives the return and declaration respecting election

—  

 Illegal  
 practices.

CHAP. XXIV. expenses by the candidate to whose election the petition relates, or where there is an authorized excuse for failing to make the return and declaration, then within the like time after the date of the allowance of the excuse (M.E.C.I.P.A. s. 25, sub. 1). If the election petition specifically alleges a payment of money, or other act made or done since the election by the candidate elected at such election, or by an agent of the candidate, or with the privity of the candidate, in pursuance or in furtherance of such illegal practice, the petition may be presented at any time within twenty-eight days after the date of such payment or other act (*ib.* sub. 2).

Time, how reckoned.

In reckoning the above times, Sunday, Christmas Day, Good Friday and Monday and Tuesday in Easter week and any day set apart for a public fast or public thanksgiving, are included, unless they happen to be the last day (M.C.A. s. 230, subs. 1, 2).

Amendment after time for presentation.

A petition cannot be amended by the introduction of a substantially new charge after the time for presenting a petition in respect of such charge has expired (*Maude v. Lowley*, L. R. 9 C. P. 165; *Aldridge v. Hurst*, 1 C. P. D. 410).

Every local government election not called in question within twelve months after the election, shall be deemed to have been to all intents a good and valid election (M.C.A. s. 73).

SERVICE.

The petition must be served within five days after it is presented (M.C.A. s. 89, sub. 3) exclusive of the day of presentation (Rules, 1883, r. 13). If the petition is not so served, it drops; but in case of difficulty in effecting personal service, substituted service may be ordered (*ib.* rr. 14, 15.)

SECURITY FOR COSTS.

At the time of the presentation of the petition, or within three days afterwards, security for costs to such an amount, not exceeding £500, as may be ordered, shall be given, either by a deposit of money or by recognizance by not more than four sureties, or partly in one way and partly in the other (M.C.A. s. 89, sub. 2). It is sufficient if the recognizance be entered into by one surety only (*Preece v. Pulley*, 49 L. J. C. P. 686). The

recognizance is not liable to any stamp duty (*Athlone*, CHAP. XXIV. 19 L. T. 530). The deposit of money by way of security, is by payment into the Bank of England (Rules, 1883, r. 16).

Such particulars of the allegations in the petition as PARTICULARS. may be necessary to prevent surprise and unnecessary expense, and to insure a fair and effectual trial may be ordered (Rules, 1883, r. 6). These particulars have been ordered to be delivered three days (*Beale v. Smith*, L. R. 4 C. P. 145), seven days (*Green v. Hall*, W. N. (1880) p. 146), and fourteen days, before the trial. But in the latest cases they had been ordered to be delivered seven days before the trial (*Lenham v. Barber*, 10 Q. B. D. 293; *acc. Clark v. Wallond*, 52 L. J. Q. B. 321), and this may, therefore, be considered to be the present practice in the absence of special circumstances. These days are reckoned exclusively of the day of delivery, and of Sunday, Christmas Day, Good Friday, and any day set apart for a public fast or public thanksgiving (Rules, 1883, r. 37). The particulars are sometimes ordered to be delivered "so far as known" (*Maude v. Lowley*, L. R. 9 C. P. 165), but these words are unnecessary, as the person who gives the particulars can only give them so far as is known; and as to insert these words might be taken as a warrant for unduly limiting the particulars, the judge should refuse to insert them (*Lenham v. Barber*, 10 Q. B. D. 293).

Where the petition contains general charges of corrupt and illegal practices, particulars of such charges will be ordered to be delivered in four days (*Salford*, 19 L. T. 500), or five days, from the date of the order (*Bradford*, *ib.* 573). A similar order will be made where the petition contains personal charges against the returning officer (*Warrington*, *ib.* 572).

Where general charges are made.

Scrutiny lists, and lists of objections, where the respondent intends to recriminate, are to be delivered six days before the trial (Rules, 1883, rr. 7, 8), and the Court has no power to admit lists or evidence after this period of time has elapsed (*Nield v. Batty*, L. R. 9 C. P. 104).

Scrutiny and recriminatory lists.

CHAP. XXIV. A special case may be stated, where the case raised by  
 SPECIAL CASE. the petition can be conveniently so stated (M.C.A. s. 93, sub. 7), as where the petition raises a question of law and the facts are not in dispute (*Woodward v. Sarsons*, L. R. 10 C. P. 734; *Burgoyne v. Collins*, 8 Q. B. D. 450). And, if the questions of law can be conveniently severed from the questions of fact, the former may be decided by special case, and the latter left for trial in the usual way (*Hereford*, 19 L. T. 703).

WITNESSES. Witnesses are subpœnaed and sworn in the usual manner (M.C.A. s. 94, sub. 1), and the election court may, by order, compel the attendance of a witness, under penalty of a contempt of court (*ib.* s. 94, sub. 2). If a witness cannot be served with a subpœna, the court will sometimes issue its order to compel the witness's attendance (*Waterford*, 2 O'M. & H. 3); but not, as a rule, unless the witness has been served with a subpœna (*Norwich*, 1 *ib.* 8). The court has no power to issue a warrant for the apprehension of a witness (*Chester*, 44 L. T. 286). If a witness absconds, the court will, if the witness's evidence be necessary, adjourn the trial, even if it be for six months (*Stroud*, 2 O'M. & H. 108).

Obligation to answer. A witness cannot refuse to answer any question relating to any offence at, or connected with, an election, on the ground that the answer may criminate or tend to criminate himself, or on the ground of privilege; but a witness who truly answers all questions is entitled to a certificate of indemnity, and his answers are not, except in a prosecution for perjury, in any proceeding, civil or criminal, admissible in evidence against him (C.I.P.P.A. s. 59, sub. 1; M.E.C.I.P.A. s. 30, sub. 1). But this certificate does not relieve the witness from any incapacity (C.I.P.P.A. s. 59, sub. 3; M.E.C.I.P.A. s. 30, sub. 1).

Expenses. The expenses of witnesses may be allowed according to the scale applicable to trials at the assizes (M.C.A. s. 94, sub. 9), and may be disallowed if the court is dissatisfied with the witness, or with the manner in which he gives his evidence. The amount of a witness's expenses may be ascertained and certified by the registrar (Rules,

1883, r. 53) ; but his allowance is only as between the witness and the party who subpœnaed him, and is not conclusive as between the parties to the petition (*McLlaren v. Home*, 7 Q. B. D. 477). CHAP. XXIV

The trial proceeds as far as practicable *de die in diem* (M.E.C.I.P.A. s. 27). It takes place before a barrister as commissioner (M.C.A. s. 92, sub. 1) in the borough or county where the election took place ; but, if special circumstances exist which render it desirable that the petition should be tried elsewhere, the court may appoint such other place for the trial as shall appear most convenient (*ib.* s. 93, sub. 2). If intimidation and outrages were practised before and during the election, and after the presentation of the petition, the place of trial may be changed (*Sligo*, 1 O'M. & H. 300) ; but something more than mere inconvenience must be shown before the court will change the place of trial, and thus depart from the clear intention of the Act that the petition should be tried in the county or borough where the election took place (*Collins v. Price*, 5 C. P. D. 544). TRIAL.

A question of law as to the admissibility of evidence or otherwise may be reserved for the High Court (M.C.A. s. 93, sub. 8), and unless this be done, there is no mode of reviewing the ruling of the election court. Reserving questions of law.

The public prosecutor attends the trial, and obeys any directions given by the court with respect to the summoning and examination of any witness, and the prosecution of offenders, and with respect to any person proposed to be reported guilty of any corrupt or illegal practice (M.E.C.I.P.A. s. 28, sub. 1). He may also summon, and with leave examine, any witness (*ib.* sub. 2), and may prosecute offenders (*ib.* sub. 3). Attendance of public prosecutor.

At the conclusion of the trial the court determines whether the respondent, or any other and what person, was duly elected, or whether the election was void, and forthwith certifies in writing such determination to the High Court (M.C.A. s. 93, sub. 4). This determination is final to all intents and purposes (*ib.* ; *Waygood v. James*, L. R. 4 C. P. 361 and see *Stevens v. Tillett*, L. R. 6 C. P. 147). Certificate of findings.



## CHAP. XXIV.

## REPORTS.

As to corrupt  
and illegal  
practices.

The court also reports to the High Court :—

- (a.) Whether any corrupt or illegal practice or offence against part IV. of the M.C.A. has, or has not, been proved to have been committed by or with the knowledge and consent of any candidate at the election, and the nature of such corrupt practice or offence.
- (b.) The names of all persons (if any) who have been proved to have been guilty of any corrupt practice or offence.
- (c.) Whether any corrupt practices have, or whether there is any reason to believe that corrupt practices have, extensively prevailed at the election (M.C.A. s. 93, sub. 5 ; M.E.C.I.P.A. s. 8, sub. 2).

This report is not final, as is the certificate (*Stevens v. Tillett*, L. R. 6 C. P. 147). It is laid before the Attorney-General with a view to his instituting or directing a prosecution against such persons as have not received certificates of indemnity (C.I.P.P.A. s. 60 ; M.E.C.I.P.A. s. 30).

Special report. The election court may also make a special report to the High Court as to any matters arising in the course of the trial, an account of which ought, in the judgment of the election court, to be submitted to the High Court (M.C.A. s. 93, sub. 6).

Exonerating report. The election court may also make a report :—(1) exonerating the candidate from the consequences of treating, undue influence, or illegal practices by agents (M.E.C.I.P.A. s. 19) ; (2) excepting an innocent act, amounting to an illegal practice, payment, employment, or hiring, from the provisions of the M.E.C.I.P.A. and relieving the candidate, agent, or person from the consequences thereof (*ib.* s. 20) ; (3) allowing an authorised excuse for non-compliance with the statutory provisions as to the return and declaration respecting election expenses (*ib.* s. 21, sub. 7) ; and (4) relieving the candidate from the consequences of an excess of expenditure over the maximum allowed, by reason of the candidate having ceased to be, or having become, a joint candidate, (*ib.* s. 5, sub. 4).

With regard to the first of the above-named heads, viz. CHAP. XXIV. the exonerating the candidate from the consequences of treating, undue influence, or illegal practices, the election court has no power to relieve against personal offences by the candidate, or against bribery or personation by agents ; but where it finds that the candidate has, by his agent, been guilty of treating, and undue influence, and illegal practices, or any of such offences, the election will, nevertheless, be upheld, and the candidate will not be subjected to any incapacity, if it be proved :—

Treating, undue influence or illegal practices by agents.

- (a.) That no corrupt or illegal practice was committed by the candidate, or with his knowledge and consent ; and that the offences were committed without the sanction *or* connivance of such candidate ; *and*
- (b.) That all reasonable means for preventing the commission of corrupt and illegal practices were taken by and on behalf of the candidate ; *and*
- (c.) That the said offences were of a trivial, unimportant, and limited character ; *and*
- (d.) That in all other respects the election was free from any corrupt or illegal practice on the part of such candidate, and of his agents (M.E.C.I. P.A, s. 19).

If these matters are fully proved, the election court has apparently no discretion, but must uphold the election.

As to the second, third, and fourth of the above-named heads, see *ante*, pp. 202, 206, 208.

An election petition abates on the death of a sole petitioner, or of the survivor of several petitioners (M.C.A. s. 96, sub. 1), but not necessarily on the death of a respondent, as another person may be admitted to defend the petition in his place (*ib.* s. 97, sub. 1). If no such petitioner is admitted, the petition drops.

ABATEMENT OF PETITION.

An application to withdraw an election petition can only be made with the consent of all the petitioners (M.C.A. s. 95, sub. 8). It must be supported by affidavits by all the parties to the petition and their solicitors (and

WITHDRAWAL OF PETITION.

Application and affidavits.

CHAP. XXIV. agents ; M.E.C.I.P.A. s. 26, sub. 8), but the High Court may, on cause shown, dispense with the affidavit of any particular person (*ib.* s. 26, sub. 1). Copies of these affidavits must be delivered to the public prosecutor a reasonable time before the application for withdrawal is heard (*ib.* sub. 5). And notice of the application to withdraw must be given in the constituency (M.C.A. s. 95, sub. 2).

Notice.

Hearing. The application cannot be heard until at least a week after the notice of the intention to apply has been given to the master (Rules 1883, r. 62) ; the public prosecutor may intervene and adduce evidence (M.E.C.I.P.A. s. 26, sub. 5) ; and any person who might have been a petitioner, may apply to be substituted for the petitioner who is desirous of withdrawing (M.C.A. s. 96, sub. 3).

Corrupt withdrawal.

A withdrawal in consideration of any payment, or of the withdrawal of any other petition, or that the seat shall be vacated, is a misdemeanour, and may subject the offender to twelve months imprisonment, and a fine of £200 (M.E.C.I.P.A. s. 26, sub. 4). And if the withdrawal is induced by any corrupt bargain or consideration, the court may order that the security given by the original petitioner shall remain and be liable to the costs of the substituted petitioner (M.C.A. s. 95, sub. 4).

COSTS.

Discretionary.

The costs, charges, and expenses of an election petition are in the discretion of the court, but regard is to be had to the disallowance of any which may have been caused by vexatious conduct, unfounded allegations or objections, and to the discouragement of any needless expense, by throwing the same on the parties by whom they have been caused (M.C.A. s. 98, sub. 1). The usual rule is that the costs follow the event.

Where constituency or third parties guilty.

Where it appears :—(1st) that a *corrupt* practice has not been proved to have been committed by or with the knowledge and consent of the *respondent*, and (2nd) that the *respondent* took all reasonable means to prevent *corrupt* practices being committed on his behalf, the court may make one or more of the following orders:—

(a.) If it appears that corrupt practices extensively prevailed, the court may order the whole, or

part, of the costs to be paid by the con- CHAP. XXIV.  
stituency.

- (b.) If it appears that any person or persons is or are proved to have been extensively engaged in corrupt practices, or to have encouraged or promoted extensive corrupt practices in reference to the election in question, the court may, after giving such person or persons an opportunity of being heard by counsel or solicitor, and of examining and cross-examining witnesses, order the whole or part of the costs to be paid by that person, or those persons, or any of them, or (if irrecoverable from such person or persons) by either of the parties to the petition (M.E.C.I.P.A. s. 29, sub. 1).

Where any person appears to the court to have been guilty of a corrupt or illegal practice, the court may, after giving such person an opportunity of making a statement to show why the order should not be made, order the whole or any part of the costs of or incidental to any proceeding before the court in relation to the said offence, or to the said person, to be paid by the said person (*ib.* sub. 2).

The costs of the petition are taxed as between Taxation.  
solicitor and client in an action in the High Court of Justice, and may be recovered as the costs of such an action (M.C.A. s. 98, sub. 2).

## II. QUO WARRANTO.

The writ of quo warranto is in the nature of a writ of right for the king, against him who claims or usurps any office, franchise, or liberty, to inquire by what authority he supports his claim, in order to determine the right (3 Black. Comm. 262). It lies also in case of non-user or long neglect of a franchise, or mis-user or abuse of it ; being a writ commanding the defendant to show by what warrant he exercises such a franchise, having never had any grant of it, or having forfeited it by neglect or abuse (*ib.*)

DEFINITION  
AND APPLICATION.

CHAP. XXIV. There are several kinds of quo warranto informations, but the only one to be considered here is that relating to a corporate office or franchise.

Leave of the court necessary. Any person desiring to prosecute a quo warranto information can now do so by leave of the court (9 Anne c. 20 s. 4; C.O.R. 46). It is a civil proceeding (47 & 48 Vict. c. 61, s. 15), and cannot be instituted in any case where an election petition is the appropriate remedy (see M.C.A. s. 87, sub. 2).

Time for making application.

An application against any person claiming to hold a corporate office shall not be made after the expiration of twelve months from the time when he became disqualified after election (M.C.A. s. 225, sub. 1.) And it must be made promptly, for, if there be unreasonable delay, the court will refuse to grant it, even though the application be made within the twelve months (*R. v. Hodson*, 4 Q. B. 648 n.; *ex parte Birkbeck*, L. R. 9 Q. B. 256; *R. v. Preece*, 5 Q. B. 94). And an election not called in question within twelve months after the election shall be deemed to have been to all intents a good and valid election (M.C.A. s. 73).

But where the disqualification is continuous, *e.g.* where a person is disqualified by reason of having entered into a continuing contract with the corporation, the application is not too late although made after twelve months from the commencement of the disqualification, or from the election of the defendant (*R. v. Francis*, 18 Q. B. 526).

OFFICE.

Must be public and not held at will.

The office must be of a public nature and a substantial office, and not merely the function or employment of a deputy or servant held at the will and pleasure of others (*Darley v. The Queen*, 12 Cl. & F. 541, 542). Therefore quo warranto does not lie in respect of the offices of clerk to county justices (*R. v. Fox*, 8 E. & B. 399); clerk to a local authority (*ex parte Richards*, 3 Q. B. D. 368); collector of rates (*R. v. Whelan*, 20 L. R. Ir. 461; or county treasurer, if he is dismissible at the pleasure of the county justices (*R. v. Justices of Herefordshire*, 1 Chit. 700). But it lies where the office of county treasurer is of a permanent nature (*Darley v. The Queen*, 12 Cl. & F. 520; and see *R. v. Hampton*,

6 B. & S. 931); and in respect of the office of clerk of the peace (*R. v. Hayward*, 2 B. & S. 585; but see *R. v. Russell*, 10 B. & S. 91). CHAP. XXIV.

The office must be full *de facto*; i.e. there must have been a real and not merely a colourable election, and the person must have been admitted to the office (*R. v. Mayor of Colchester*, 2 T. R. 259; *R. v. Mayor of Oxford*, 6 A. & E. 349; *Frost v. Mayor of Chester*, 5 E. & B. 531; *R. v. Mayor of Winchester*, 7 A. & E. 215; *R. v. Slatter*, 11 A. & E. 505). If the election was merely colourable and no real election, the office is not full *de facto*, and the remedy is by mandamus, and not by quo warranto (*R. v. Cambridge*, 4 Burr. 2010; *R. v. Bankes*, 3 Burr. 1454; *R. v. Mayor, etc., of Oxford*, 6 A. & E. 349; *R. v. Mayor, etc., of Leeds*, 11 A. & E. 512). A mere claim to the office is insufficient, there must be a user as well as a claim (*R. v. Whitwell*, 5 T. R. 85); nor is it sufficient that the person has tendered himself to be sworn, if he has not been sworn (*ib.*); or has allowed his name to remain on the burgess roll after notice of objection to his qualification (*R. v. Armstrong*, 25 L. J. Q. B. 238). But, if actual user is proved, it is unnecessary to prove also a formal acceptance (*R. v. Quayle*, 11 A. & E. 508).

The granting of a quo warranto is discretionary with the court, even when a good objection to the title is shown (*R. v. Dawes*, 4 Burr. 2022; *R. v. Sargent*, 5 T. R. 467; *R. v. Parry*, 6 A. & E. 810). And, if some other body, such as the Local Government Board, is inquiring into the validity of the election, the court may, in its discretion, refuse a quo warranto (*R. v. Hampton*, 6 B. & S. 932). WRIT IS DISCRETIONARY.

A quo warranto cannot now be granted on the ground that the holder of an office under the L.G.A. was disqualified at the time of his election, or that he was not duly elected by a majority of lawful votes, as a local government election can only be questioned on these grounds by an election petition (M.C.A. s. 87, subs. 1, 2). But it may be granted on the ground that the election itself was invalid by reason of irregularity (*R. v. McGowan*, Grounds for application.



CHAP. XXIV. 11 A. & E. 869; *R. v. Mayor of Winchester*, 7 A. & E. 215; *R. v. Backhouse*, L. R. 2 Q. B. 16; *R. v. Rippon*, 1 Q. B. D. 217; or that the defendant was not properly admitted to the office (*Mayor of Penryn's Case*, 1 Stra. 582; *R. v. Courtenay*, 9 East. 246; *R. v. Sawyer*, 10 B. & C. 486); or that he has subsequently become disqualified (*R. v. Phippen*, 7 A. & E. 966; *R. v. Francis*, 18 Q. B. 526); or that by non-user or long neglect, mis-user or abuse of the office, he is no longer entitled to retain it (*Peter v. Kendall*, 6 B. & C. 703; 3 Black Comm. 262).

Cesser of office  
and resignation.

If the defendant has ceased to hold the office, a quo warranto will not in general be granted. But resignation, whether before or after the application, is no answer (*R. v. Blizzard*, L. R. 2 Q. B. 55; *R. v. Warlow*, 2 M. & S. 75); and when the object is to try a civil right (*R. v. New Radnor*, 2 Ld. Keny. 498); or where something done in the office may affect the general administration of affairs in the county or borough (*re Harris*, 6 A. & E. at p. 477), a quo warranto will be granted.

Irregularity  
not affecting  
result of  
election.

Again, if the alleged irregularity does not affect the result of the election, the court will refuse its leave to the issue of a quo warranto (*R. v. Ward*, L. R. 8 Q. B. 210; *R. v. Cousins*, *ib.* 216). And quo warranto is not the proper proceeding to question the performance of any judicial, not ministerial, function; *e.g.* an error of a returning officer in his judicial character (*R. v. Collins*, 2 Q. B. D. 30; *R. v. Russell*, 10 B. & S. 91; *R. v. Diplock*, L. R. 4 Q. B. 549).

RELATOR.

Who may be.

The relator need not be a burgess or county elector if he is an inhabitant of the county and subject to the control of the county council (*R. v. Hodge*, 2 B. & A. 344 *n.*; *R. v. Parry*, 6 A. & E. 810; *R. v. Quayle*, 11 A. & E. 508). A mere stranger, "prowling into other men's rights," cannot be a relator (*R. v. Kemp*, 1 East. 46 *n.*; *R. v. Stacey*, 1 T. R. 3); nor can a stranger set in motion a member of a corporation to stir up a question for a purpose entirely unconnected with the concerns of the corporation (*R. v. Trevenen*, 2 B. & A. 339; *R. v. Wakelin*, 1 B. & Ad. 50).

The relator must not have concurred or acquiesced in the act of which he comes to the court to complain, or in similar acts at former elections (*R. v. Symmons*, 4 T. R. 223; *R. v. Clarke*, 1 East. 38; *R. v. Lofthouse*, L. R. 1 Q. B. 433), unless he can show that he was ignorant of the objection (*R. v. Slythe*, 6 B. & C. 240; see *R. v. Trevenen*, 2 B. & A. 339). But merely acting with the defendant in corporation business is not a valid objection to the relator (*R. v. Benney*, 1 B. & Ad. 684).

Ten days' notice of the application must be given to the person intended to be affected thereby, setting forth the grounds of the application, and accompanied by a copy of the affidavits intended to be used in support of the application (M.C.A. s. 225, subs. 2, 3, 4; C. O. R. 52, 53, 56). The relator must depose that the motion is made at his instance as relator (C. O. R. 54). If the affidavits are insufficient, the court may refuse to allow them to be amended, and may leave the relator to renew his application on better materials (*R. v. Barsey*, 4 M. & S. 253; *R. v. Thirkwin*, 9 L. T. 731). An affidavit by one unobjectionable relator may be aided by the affidavits of others, although the latter are not qualified as relators (*R. v. Brame*, 4 A. & E. 664; *R. v. Parry*, 6 A. & E. 810).

Where the relator is not the real relator, but is put forward and is acting at the instigation of others, and is in low and indigent circumstances, the court may order security for costs to be given (*R. v. Dudley*, 7 Dowl. 700; *R. v. Wakelin*, 1 B. & Ad. 50). But it will not do so where the relator is a member of the corporation, and is interested in the matter complained of, even though he be insolvent (*R. v. Wynne*, 2 M. & S. 346).

The costs of the order nisi, and of showing cause, are entirely in the discretion of the court, whether the order be discharged or made absolute (C. O. R. 300). In discharging the order nisi, the court may impose the costs on the solicitor, or other parties joining in the application (C. O. R. 56; and see *R. v. Greene*, 4 Q. B. 646). But if the order nisi is discharged on some preliminary objection, the court may refuse to give costs to

CHAP. XXIV.

NOTICE OF APPLICATION.

COSTS.  
Security.

Costs of order nisi.

CHAP. XXIV. the defendant (*R. v. Proprietors of Nottingham Journal*,  
 ————— 9 Dowl. 1042).

RECOGNIZANCE. If the order nisi is made absolute, the relator must  
 ————— enter into a recognizance in the penalty of £50 to  
 prosecute and to abide by the court's order (C. O. R. 46).

PLEADINGS. After the order nisi has been made absolute, the infor-  
 ————— mation is filed (C. O. R. 46), and is pleaded to as if it  
 Special Case. were a statement of claim in an action (*ib.* 134). A  
 special case may be stated (C. O. R. 140).

DISCLAIMER. The defendant may file a disclaimer, upon which  
 ————— judgment of ouster may be entered and the costs taxed  
 as in judgment by default (C. O. R. 59).

TRIAL. Notice of trial is given, and the trial and subsequent  
 ————— proceedings take place, as in an action.

## CHAPTER XXV.

CHAP. XXV.

EXCEPTIONAL PROVISIONS AS TO THE  
COUNTY COUNCIL FOR LONDON.

<i>Definitions</i> . . . . .	225	<i>Electors resident within fifteen miles</i> . . . . .	226
<i>"Metropolis"</i> . . . . .	"	<i>Register of electors</i> . . . . .	"
<i>"Administrative county"</i> . . . . .	"	<i>Returning officer</i> . . . . .	"
<i>Administrative county of</i> . . . . .	"	<i>Advance for expenses</i> . . . . .	"
<i>London</i> . . . . .	"	<i>Ballot boxes and fittings</i> . . . . .	"
<i>Number of county councillors</i> . . . . .	"	<i>Place of first meeting of provisional council</i> . . . . .	227
<i>And of county aldermen</i> . . . . .	226		

THE "metropolis" means the city of London and the parishes and places mentioned in Schedules A, B, and C, to the Metropolis Management Act, 1855 (18 & 19 Vict. c. 120) as amended by subsequent Acts (L.G.A. s. 100). Definitions.  
"Metropolis."

The expression "administrative county" means the area for which a county council is elected in pursuance of the L.G.A., but does not (except where expressly mentioned) include a county borough (L.G.A. s. 100). The county boroughs are defined in L.G.A. s. 31. "Administrative county."

The metropolis shall, on and after the appointed day, be an administrative county for the purposes of the L.G.A. by the name of the administrative county of London (L.G.A. s. 40, sub. 1). Administrative county of London.

The number of the county councillors for the administrative county of London shall be double the number of members which at the passing of the L.G.A. the parliamentary boroughs in the metropolis are authorized by law to return to serve in parliament; and each such borough, or if it is divided into divisions, each division Number of county councillors.

CHAP. XXV. thereof, shall be an electoral division for the purposes of the L.G.A., and the number of county councillors elected for each such electoral division shall be double the number of members of parliament which such borough or division is at the passing of the L.G.A. entitled to return to serve in Parliament (L.G.A. s. 40, sub. 4);

And of county  
aldermen. provided that the number of county aldermen in the administrative county of London shall not exceed one-sixth of the whole number of county councillors (*ib.* sub. 5).

Electors  
resident  
within fifteen  
miles. A person who is entitled to be registered as a county elector in respect of any qualification in the administrative county of London, in all respects except that of residence, and is resident beyond seven miles, but within fifteen miles of the county, shall be entitled to be registered as a county elector (L.G.A. s. 77).

Register of  
electors. The returning officer shall make up the county register and division registers of the county electors for the purposes of the first election, and shall make them up out of the lists of voters made out in the year 1888, and shall make the necessary alterations in the forms of those lists, and the secondary of London, town clerks of the parliamentary boroughs, and the clerks of the peace of Middlesex, Surrey, and Kent, shall deliver to the said returning officer such number of copies of the revised lists of electors as he may require (L.G.A. s. 103, sub. 8).

Returning  
officer. The returning officer for the first election shall be such fit person as the Local Government Board may appoint, and such returning officer shall, for the purposes of such election, have the powers and duties of the sheriff (L.G.A. s. 103, sub. 7).

Advance for  
expenses. The Metropolitan Board of Works shall advance to the returning officer such sum as is authorized by the L.G.A. to be advanced by county councils to returning officers for the purposes of an election (L.G.A. s. 103, sub. 9, & see *ante*, p. 63).

Ballot boxes  
and fittings. Any sheriff, under-sheriff, officer of the London School Board, or other public officer having authority in the metropolis, and being in possession of any ballot boxes

or other fittings or arrangements for an election, shall CHAP. XXV.  
permit such returning officer to use the same for the —  
purposes of the first election (L.G.A. s. 103, sub. 7).

The provisional council of the county of London shall be entitled to use the buildings belonging to the Metropolitan Board of Works, so that they do not interfere with the holding of any court (L.G.A. s. 106, subs. 3, 5). The first meeting of the provisional council may therefore be summoned for, and held in, any such building.

Place of first  
meeting of  
provisional  
council.





# APPENDIX I.

## FORMS.\*

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### THE LOCAL GOVERNMENT ACT, 1888.

1.

ELECTION of county councillor for the         electoral division for hire of  
of the county of         to be held on the         day         of committee  
January, 1889.         room.†

I, *A. B.*, of         , Esq., a candidate at the election of  
county councillor for the         division of the county of  
to be held on the         day         of January, 1889, do hereby

\* For other election forms, see Election Agent, p. 462.

† See *ante*, p. 80.

APP. I. agree to hire, and I, *K. K.*, of \_\_\_\_\_ in consideration of the sum of £ \_\_\_\_\_, to be paid to me by the said *A. B.*, do hereby agree to let, the room known as [*describe the room or premises*] to be used from this day forth until the close of the poll as a COMMITTEE ROOM for the said *A. B.* at the said election. And for the consideration aforesaid I, the said *K. K.*, further agree to supply reasonable firing, lighting, and cleaning for the said room.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 188 .  
(Signed) *A. B.*  
*K. K.*

Witness *P. Q.*  
(*Address*)  
(*Description*)

---

## 2.

[*Title as in No. 1, ante, p. 229.*]

Agreement to  
provide com-  
partments and  
furnish polling  
stations.\*

AGREEMENT made the \_\_\_\_\_ day of \_\_\_\_\_ 1889, between *F. F.*, of \_\_\_\_\_ (hereinafter called "the contractor") of the one part, and *Y. Z.*, of \_\_\_\_\_, sheriff of the county of \_\_\_\_\_ (hereinafter called "the sheriff") of the other part, whereby it is mutually agreed as follows:—

1. The contractor shall provide, set up, and maintain, in complete compliance with the requirements of the Ballot Act, 1872, and to the satisfaction in all respects of the sheriff, his deputy or under-sheriff, in each of the polling stations mentioned in the first column of the schedule hereto, such number of secret compartments as are specified in the second column of the said schedule, and shall provide at each station all tables, desks, barriers, and all such other furniture, as is necessary and usual, or as shall be required by the sheriff, his deputy, or under-sheriff, for the use of the presiding officer, poll clerks, candidates, polling agents and voters, at the election of county councillor for the \_\_\_\_\_ electoral division of the county of \_\_\_\_\_ to be held on the \_\_\_\_\_ day of January 1889, together also with light and fire from seven o'clock a.m. to nine o'clock p.m. on the day of election or any adjourned day of election.

2. The said compartments, tables, desks, barriers, and furniture shall be put, placed, and set up, ready for use in each of the said polling stations, without damage or injury to the respective rooms or buildings used as the said polling stations, or to the furniture, fittings or fixtures, now or then

\* See *ante*, p. 117.

therein, by        o'clock p.m. at the latest on the day previous to the day of election, and shall be removed therefrom, without damage or injury as aforesaid, on the day succeeding the day on which the poll shall be closed.

APP. I.  
—

[3. The contractor shall, on the day before the day of election, post or cause to be posted on the outside of every polling station, and inside every secret compartment of such polling station, all placards and posters which the sheriff, his deputy or under-sheriff, shall instruct him to so post, and which shall be supplied to him by the sheriff, his deputy, or under-sheriff, and shall keep the same so posted until after the close of the poll.]

4. Upon payment by the county council to the sheriff of the charges of the sheriff as returning officer, the sheriff shall pay to the contractor such sum or sums as shall be allowed to the sheriff on the taxation or settlement of his charges for the works herein required to be done and any materials herein required to be supplied. And the contractor shall accept such sum or sums in full payment for all works required to be done and materials to be supplied by him under this agreement.

5. The contractor shall be answerable for all damage done to any polling station or room used as a polling station in the erection or removal of the said compartments, tables, desks, barriers, and furniture, and hereby undertakes to indemnify the sheriff therefrom, and also from all damages, costs, charges, and expenses, which shall or may be incurred by the sheriff owing to any neglect, omission, or failure on the part of the contractor, his agents or servants in complying with this agreement.

In witness, &c.,

THE SCHEDULE ABOVE REFERRED TO.

Name of Polling Station.	No. of Compartments to be Erected.

[Title as in No. 1, ante, p. 229.]

I, A. B., of  
county councillor for the  
the county of

Esq., a candidate at the election of  
electoral division of  
, to be held on the

3.

Appointment  
of candidate's  
representative.\*

\* Prescribed by M.C.A. sch. III. pt. II. r. 11 ; see ante, p. 101.

APP. I.

day of January, 1889, hereby appoint *G. H.*, of \_\_\_\_\_, to attend as my REPRESENTATIVE and on my behalf, the proceedings before the Returning Officer of the said county, or his deputy, with reference to objections to the nomination papers of candidates at such election. And I, the said *G. H.*, hereby accept the above appointment, and agree to attend the proceedings aforesaid.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 188 .  
(Signed) *A. B.*  
*G. H.*

Witness *P. Q.*  
(*Address*)  
(*Description*)

---

[*Title as in No. 1, ante, p. 229.*]

4.  
Candidate's  
consent to  
nomination.\*

I, *A. B.*, of \_\_\_\_\_ Esq., a candidate at the election of county councillor for the \_\_\_\_\_ electoral division of the county of \_\_\_\_\_ to be held on the \_\_\_\_\_ day of January, 1889, being now absent from the United Kingdom, do hereby CONSENT TO BE NOMINATED as a candidate at the above named election.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 1889.  
(Signed) *A. B.*

Witnesses to the above signature of *A. B.*, Esq.

*P. Q.*  
(*Address*)  
(*Description*)

*R. S.*  
(*Address*)  
(*Description*)

5.  
Declaration as  
to election  
expenses.†

I, \_\_\_\_\_, having been a candidate at the election of county councillor for the \_\_\_\_\_ electoral division of the county of \_\_\_\_\_ held on the \_\_\_\_\_ day of January, 1889, do hereby solemnly and sincerely declare that I [and my agents] have paid \_\_\_\_\_ for my expenses at the said election, and that, except as aforesaid, I have not, and to the best of my knowledge and belief, no person, nor any club, society, or

---

\* Prescribed by M.C.A. sch. III. pt. II. r. 16; see *ante*, p. 100.

† This is the form in M.E.C.I.P.A. sch. IV., and is prescribed by *ib.* s. 21, sub. 3. See *ante*, p. 164.

association, has, on my behalf, made any payment, or given, promised, or offered any reward, office, employment, or valuable consideration, or incurred any liability on account of or in respect of the conduct or management of the said election.

And I further solemnly and sincerely declare that, except as aforesaid, no money, security, or equivalent for money, has to my knowledge or belief been paid, advanced, given, or deposited by any one to or in the hands of myself, or any other person, for the purpose of defraying any expenses incurred on my behalf on account of or in respect of the conduct or management of the said election.

And I further solemnly and sincerely declare that I will not at any future time make or be a party to the making or giving of any payment, reward, office, employment, or valuable consideration for the purpose of defraying any such expenses as last mentioned, or provide or be a party to the providing of any money, security, or equivalent for money for the purpose of defraying any such expenses.

(Signature of declarant) *A. B.*

Signed and declared by the above-named declarant on the  
day of \_\_\_\_\_, before me,

(Signed) *E. F.*,

*Justice of the Peace for*

I, *A. B.*, having been elected chairman of county council [*or* county alderman, *or* county councillor], for the [electoral division of the] county of \_\_\_\_\_, hereby declare that I take the said office upon myself, and will duly and faithfully fulfil the duties thereof, according to the best of my judgment and ability [*and in the case of the person being qualified by estate say*, And I hereby declare that I am seised or possessed of real or personal estate, or both [*as the case may be*], to the value or amount of one thousand pounds, or five hundred pounds [*as the case may require*], over and above what will satisfy my just debts].

[*Title as in No. 1, ante, p. 229.*]

CANDIDATURE OF *A. B.*, ESQ.

PRELIMINARY.

1. Carefully read, and make yourself master of, these instructions.

\* This is Form A in M.C.A. sch. VIII. pt. I., and is prescribed by *ib.* s. 35. See *ante*, p. 187.

† See *ante*, p. 136.

APP. I.  
—

6.

Declaration  
on acceptance  
of office.\*

7.

Instructions  
to polling  
agents.†

Master these  
instructions.



- APP. I.
- For explanations apply to candidate.
- Object of these instructions.
- Vote of polling agent.
- Responsibility for accompanying documents.
- Duties stated generally.
- Marked register.
2. If you find any explanation of these instructions to be necessary, apply to *A. B.*, Esq., and your application will be at once attended to.
  3. These instructions are to be considered as a guide and assistant merely. They are not intended to control your discretion or to limit or define your powers. You must make yourself acquainted with the law and with the duties of your office.
  4. If you are a paid polling agent, you cannot vote; if not paid for your services, and if a voter, you are particularly requested to give your vote immediately after the opening of the poll.
  5. You are responsible for all the papers and documents entrusted to you; you must see that they are duly cared for, and that they are, at the close of the poll, handed over to *A. B.*, Esq., or to such person as he may appoint. Your copy of the register (see paragraph 7) will be of great use after the poll, and you should therefore take especial care to preserve it, and to mark it as directed by these instructions.
  6. Stated generally, your duties are :—
    - (a) To prevent any person, other than the real person on the register, from voting, or from voting a second time.
    - (b) To keep upon your copy of the register a correct record of the voters who have polled at your station.
    - (c) To take an exact note of any irregularity, or of anything unusual occurring at your station.
  7. Accompanying these instructions is a copy of the register containing the registered numbers, names, and addresses of all voters entitled to poll at the polling station to which you are assigned. No other person can poll at that station. Against each name is a Red or Blue mark :—
    - (a) Red signifying that the voter is expected to vote for *A. B.*, Esq.
    - (b) Blue signifying that the voter is expected to vote for *C. D.*, Esq.
- The voters marked with the [blue] mark are those who may be personated by the party. The copy of the register also contains words indicating the voters who will not poll, or are not likely (for the reason mentioned) to poll at the polling station to which you are assigned. Thus, the dead electors are marked "Dead"; those expected to be prevented from polling on account of ill health are marked "Sick"; those absent from home are marked "Absent"; those who have left the constituency are marked "Removed"; those disqualified from voting (*e.g.* by reason of their being paid agents, aliens, etc.) are marked "Disqualified"; and those possessing more than one qualification, *who may have voted at another polling station*, or in another district, are marked "Duplicate."

You must before the day of election make yourself well acquainted with these marks, and with any notes or remarks appearing on your copy of the register.

APP. I.

8. Should you require any assistance during the poll, you must despatch a messenger to *A. B.*, Esq., but must not on any account leave your polling station.

For assistance, send to the candidate.

9. You must duly make the declaration of secrecy before the opening of the poll. The returning officer or a justice of the peace are empowered to take this declaration.

Taking the declaration of secrecy.

10. You must take with you to the polling station your appointment as polling agent, your copy of the register, a lead pencil, and a few sheets of note paper.

Documents to be taken to polling station.

### OPENING THE POLL.

11. The poll commences at eight a.m. precisely, and closes at eight p.m. precisely (Greenwich mean time). You must be at your polling station at a quarter before eight a.m., and must remain at the station until after the poll has closed. If you desire to leave the polling station for any purpose, you must obtain permission from the presiding officer.

Hours of poll and attendance at station.

12. You should observe that just before the commencement of the poll the presiding officer *shows the ballot box empty* to such persons as may be present in the station, so that they may see that it is empty; that the presiding officer then locks it up, and so seals it with his seal as that it cannot be opened without breaking such seal; that he places it near him, and keeps it in his view during the continuance of the poll. Once sealed, the ballot box can on no account be again opened.

Showing, locking, and sealing ballot box.

13. You should also observe:—1st, that a notice showing for what voters the station is allotted, and the directions for the guidance of voters in voting, are posted outside the station; 2nd, that before and during the polling hours the directions for the guidance of voters in voting are kept posted inside each compartment; 3rd, that a black-lead pencil for marking the ballot papers is provided and kept sufficiently pointed for use in each compartment during polling hours; 4th, that nothing is printed or written on, or inside, the compartments except the above-named directions.

Observe that notices, &c., are duly posted.

14. The only persons entitled to be present in the polling station besides the presiding officer, poll clerks, and voters voting or waiting to vote, are the candidates and their polling agents, two electors and the constables on duty. The presiding officer should exclude all other persons, and, if need be, you must require him to do so.

Persons entitled to be in station.

15. When a voter comes up to vote, the presiding officer or the poll clerk will ask the voter his name, and having ascertained that the voter is on the register for the station, will call

Application for and delivery of ballot paper.

## APP. I.

out the voter's number, name, and qualification as stated in the register; will make a mark in the margin against the voter's name in the register, to show that he has received a ballot paper; will write the voter's registered number on the counterfoil, will then detach the ballot paper from the counterfoil, will stamp the ballot paper with the official mark, and will then hand the ballot paper to the voter. No mark of any kind is to be put upon the ballot paper by the presiding officer except the official mark, and none upon the counterfoil except the above-named registered number.

Duty of polling agent thereon.

16. You will listen to the name given by the voter and called out by the presiding officer to his poll clerk, will look it out in your copy of the register, and will strike it out with your pencil, to show that such voter has received a ballot paper. If the name be that of a \_\_\_\_\_ and be marked [blue] in your copy of the register, you will notice the remarks, if any, that appear against such name. If the remarks suggest that the voter is not likely to vote, you will require the presiding officer to put to the voter the questions specified in the next paragraph.

What questions may be put to voter.

17. No inquiry shall be permitted as to the right of any person to vote, except that the presiding officer or his poll clerk shall, if required by any candidate or any candidate's polling agent, put to the voter at the time of his applying for a ballot paper, *and not afterwards*, the two statutory questions, or either of them, viz. :—

- (1) Are you the person enrolled in the burgess roll [*or registered in the register of county electors*] now in force for this electoral division as follows [*reading the whole entry from the roll or register*]?
- (2) Have you already voted, at the present election in this or any other electoral division?

The first of these questions is as to the identity of the *person*, and not as to the identity of *name*. The inquiry is not whether the voter's name is *A. B.*, but whether he is the person whose name (whatever that may be) appears as *A. B.* The person actually registered, may, therefore, safely answer this question, although his name is incorrectly stated on the register. After these questions have been put, you will write Q. P. (Questions Put) against the name of the voter in your copy of the register.

Other questions should be objected to.

18. You are desired to take especial care that no other questions than the above—*not even as to RESIDENCE*—are put by the presiding officer (or by the polling agent of the opposing candidate) to any voter who may be supposed to be favourable to *A. B.*, Esq., and, should any other question be put, *to tell the voter he need not answer it*. No question must be put except on the request of a candidate, of two electors, or of a polling agent appointed in writing, whose appointment has been given to the

presiding officer previous to the opening of the poll, and who has made the declaration of secrecy. APP. I.

19. The questions should be calmly and deliberately put, and answered, and in making his replies the voter should be protected from interruption or interference. How questions should be put.

20. If the first of the two questions set out in paragraph 17 be satisfactorily answered by the voter in the affirmative, and the second in the negative, it is imperative on the presiding officer to allow the voter to poll. Satisfactory answers.

21. If the answers to either of the above questions be unsatisfactory, and if you have reason to disbelieve the voter's answers, and if the information on your copy of the register with respect to the voter be positive, or if the circumstances are *very suspicious*, and admit of NO DOUBT in your mind that a personation of a voter has taken place, you must declare to the presiding officer as specified in the next paragraph, whereupon the voter will be given into custody. Unsatisfactory answers.

You must however bear in mind that a mistake on your part may subject you to an action for damages, and your candidate to a fine of from £5 to £10.

22. If any polling agent shall, at the time a voter applies for a ballot paper, or after he has voted, and before he leaves the station, declare to the presiding officer that he (the agent) verily believes and undertakes to prove that such voter is not in fact the person in whose name he assumes to vote, or to the like effect, *the presiding officer* shall order such voter into custody. And if the voter answers in the affirmative the statutory questions, the presiding officer shall not reject the vote, but shall cause the words, "protested against for personation," to be placed against the vote of the person so charged in the register. No poll clerk or polling agent can order a person into custody or order the removal of any person from the polling station. Arrest and voting of alleged personator.

23. Upon any voter being thus given into custody, you will take a note of the fact in your copy of the register opposite to the voter's name, and, if the arrest has been at your instance, you should *send word to A. B., Esq., at once if possible*, so that he may give instructions, or arrange to attend the police court immediately after the poll, on the hearing of the charge. Proceedings on arrest being made.

24. The presiding officer should not refuse a ballot paper to a voter on account of any misnomer or inaccurate description in the register, if such voter be on the register and the presiding officer be satisfied of the identity of the person applying to vote. Misnomer or inaccuracy in register.

25. Having received his ballot paper, the voter at once proceeds with it into one of the compartments, and there secretly marks his vote, by placing a cross (X) on the right-hand side opposite the name of [each] candidate for whom he votes; he then folds up the ballot paper so as to conceal the Mode of voting.

APP. I.

mark which he has made, but so as to show the official stamped mark on the back ; he then leaves the compartment, and takes the ballot paper so folded, and without showing the front of the ballot paper to any person, to the ballot box ; shows the official mark on the back of the folded ballot paper to the presiding officer, or, in his absence, to the poll clerk ; then at once places it in the ballot box, and immediately quits the station. No undue delay in voting is to be allowed. You must see that the regulations in this and in paragraph 15 are strictly observed, and, if any deviations are made, you must note down the particulars and the cases in which they occur.

Spoilt ballot  
paper.

26. If a voter inadvertently deals with his ballot paper in such a manner as that it cannot be conveniently used as a ballot paper, he may, on delivering it up and proving the fact of such inadvertence to, and to the satisfaction of, the presiding officer or his poll clerk, obtain another ballot paper, and the spoilt ballot paper is immediately marked "cancelled," but must not be destroyed or put in the ballot box.

Blind, Jewish,  
and illiterate  
voters.

27. If the voter :—

- (1.) Is incapacitated, from blindness or other physical cause, from marking his ballot paper ; or
- (2.) Verbally declares (if the poll be taken on a Saturday) that he is a Jew, and objects, on religious grounds, to mark his vote ; or

(3.) Makes the declaration that he is unable to read ; then, and in any of such three cases only, the presiding officer or his poll clerk marks the ballot paper for the voter and as he directs, and then places it in the ballot box, and enters the name and registered number of the voter in the "List of Votes marked by the Presiding Officer."

Taking steps  
to secure  
secrecy in  
such cases.

28. Before so marking the votes in any of the three cases last mentioned, the presiding officer or his poll clerk must take due steps to secure secrecy ; he must either clear the station or take such other steps as he may deem requisite to prevent any other voter, or any constable, from knowing how and for whom the vote is given. The votes are, however, to be so marked in the presence of the candidates' polling agents, or such of them as may be present and in attendance. You need not keep any record of these votes unless something particular takes place.

Taking the  
declarations  
of inability to  
read.

29. The declaration of inability to read, named in the third case in paragraph 27 *supra*, must be read to the voter, and signed by him with his mark in the presence of the presiding officer or his poll clerk, who signs the certificate at the foot of the declaration, and retains such declaration.

Tendered  
votes after  
personation.

30. If a person representing himself to be a particular voter named on the register, applies for a ballot paper after another person has voted as such voter, the presiding officer or his poll clerk, without being so required by any candidate,



elector, or agent, puts the two statutory questions, and, if such questions are duly answered, the presiding officer or his poll clerk hands to such person a tendered ballot paper, which tendered ballot paper such person is entitled to mark in the same manner as any other voter, but which is handed to the presiding officer or his poll clerk, instead of being put into the ballot box, and is indorsed by the presiding officer or his poll clerk with the name of the voter and the number on the register, and the presiding officer or poll clerk enters such person's name and registered number in the "Tendered Votes List." The coloured ballot papers are the tendered ballot papers. You must insist upon these votes being taken, and must enter particulars on your register.

31. The presiding officer and his poll clerk does not supply ballot papers to :—

In what cases  
ballot papers  
should be  
refused.

- (1.) Persons whose names are not on the register of voters assigned to his polling station, or against whose names asterisks (\*) are placed, with the foot-note "Not for Voting ;"
- (2.) Persons who refuse to answer the statutory questions, or either of them, if required to be put ;
- (3.) Persons who appear by their answers not to be the same persons whose names appear on the register of voters, or who appear to have voted before at the present election ;

but supplies them to all other voters.

32. If a lunatic, a childish person, a drunkard, or a deaf and dumb or infirm person, presents himself to vote, the presiding officer must, before delivering to him a ballot paper, satisfy himself by the voter's statements (which in the case of a deaf and dumb person may be given in writing or by signs), that the voter understands the purpose for which he has come to the polling station. If any candidate's polling agent requires the statutory questions to be put to such a voter, the presiding officer must further satisfy himself that the voter understands the nature of the statutory questions ; and the voter must, by the means aforesaid, be able satisfactorily to answer such questions. Upon these requirements being satisfactorily fulfilled, the voter is entitled to receive a ballot paper.

Lunatics,  
drunkards,  
and infirm  
persons.

33. The Ballot Act (section 4) expressly prohibits any agent in attendance at a polling station from communicating before the poll is closed the name or register number of any voter who has or has not applied for a ballot paper, or voted at that station. No such information must therefore be given or attempted to be given, verbally or in writing, by you, and you will at once inform the presiding officer of any attempt to prevent any infringement of this law by the polling agent for the other candidate or by any other person.

Secrecy must  
be preserved.



## APP. I.

Register, &c., must not be taken away before poll closed.

Closing and sealing up the ballot box.

No ballot paper to be given out after poll closed.

Making up the ballot papers, &c., into packets.

34. The polling agent for the other candidate must not be allowed to take his register, nor to send any improper message, paper, or memorandum, out of the polling station before the close of the poll. The attention of the presiding officer must be called by you to any infraction or attempted infraction of this rule. The presiding officer may also refuse to permit you to take your marked register out of the polling station before the poll has closed.

35. The poll closes at eight p.m. (Greenwich mean time). At that hour precisely, the presiding officer covers over the opening in, and seals up, the ballot box, so as to prevent the introduction of additional ballot papers.

36. The presiding officer cannot give out any ballot paper after eight p.m., but may allow voters in the polling station, and who may have received ballot papers before that hour, to mark and deposit them in the ballot box.

37. The presiding officer then clears the station of all persons except his poll clerks, such of the candidates' polling agents as desire to remain, and such constables on duty as he deems it desirable to retain inside the station. He then fills up and signs the "Statement of the Number of Votes marked by the Presiding Officer" and the "Ballot Paper Account," and in the presence of such of the polling agents of the candidates as are in attendance, makes up into separate packets, seals with his seal, and the seals of such of the candidates' polling agents as desire to affix their seals:—

- (1.) The ballot box unopened, but with the key attached, and the opening covered over and sealed up;
- (2.)—(a) The unused (white) ballot papers, (b) the unused (coloured) ballot papers, and (c) the spoilt ballot papers, all placed together in one packet;
- (3.) The tendered ballot papers used;
- (4.)—(a) The presiding officer's marked copy of the register of voters, and (b) the counterfoils of the ordinary and tendered ballot papers used, the register and counterfoils being sealed up separately, but both placed in one packet;
- (5.)—(a) The tendered votes list, (b) the list of votes marked by the presiding officer, (c) the statement of the number of voters whose votes are so marked by him, and (d) the declarations of inability to read which have been filled up and used.

These packets are forthwith delivered by the presiding officer to the returning officer, and you must accompany them. You must also attend at the counting of the votes, to verify, if required, your seal on the ballot box and packets.

## THE LOCAL GOVERNMENT ACT, 1888.

APP. I.

Election of County Councillor for the electoral  
division of the county of held on the  
day of January, 1889.

8.

List of persons  
elected (un-  
contested  
election).\*

I, the Returning Officer at the above election, hereby publish the following

## LIST OF THE PERSONS ELECTED

at the above election, viz.

*A. B.*, of Esq. [*describing him as in his nomination paper, and the other persons elected, if any.*]

Dated this day of January, 1889.

*Y. Z.*,

Sheriff [*or Mayor, or Alderman*] and Returning Officer.

Printed and published by *W. X.*, of

[*Title as in No 1., ante, p. 229.*]

9.

Nomination  
paper.†

WE, the undersigned, being respectively electors [*or burgesses*] hereby nominate the following person as a candidate at the said election.

Surname.	Other Names.	Abode.	Description.

SIGNATURE.	Number on county register [ <i>or burgess roll</i> ], with the electoral division or polling district, if any, having a distinct numbering.

\* Prescribed by M.C.A. s. 57 ; see *ante*, p. 107.

† See *ante*, p. 94.

APP. I.  
—

We, the undersigned, being respectively electors [*or* burgesses], hereby assent to the nomination of the above-named person as a candidate at the said election.

Dated this                      day of                      188 .

SIGNATURE.	Number on county register [ <i>or</i> burgess roll], with the electoral division or polling district, if any, having a distinct numbering.

10.  
Notice of  
election.\*

[*Title as in No. 1, ante, p. 229.*]

TAKE NOTICE

1. That an election of county councillors for the [several] electoral divisions of                      of the said county will be held on the                      day of January, 1889.

2. Candidates must be nominated by writing, subscribed by two electors as proposer or seconder, and by eight other electors as assenting to the nomination.

3. Candidates must be duly qualified for the office to which they are nominated, and the nomination paper must state the surname and the other names of the person nominated, with his abode and description.

4. Each candidate must be nominated by a separate nomination paper.

5. Every person who forges a nomination paper, or delivers any nomination paper knowing the same to be forged, will be guilty of a misdemeanour, and be liable to imprisonment for any term not exceeding six months, with or without hard labour.

\* See *ante*, p. 88.

6. Nomination papers must be delivered by the candidate himself, or his proposer or seconder, at the before five o'clock in the afternoon of \_\_\_\_\_ day the \_\_\_\_\_ day of January next.

7. The Returning Officer will attend at \_\_\_\_\_ on \_\_\_\_\_ day, the \_\_\_\_\_ day of January next for a sufficient time between the hours of two and four o'clock in the afternoon, to hear and decide objections to nomination papers.

8. Forms of nomination papers may be obtained at \_\_\_\_\_ ; and the \_\_\_\_\_ will, at the request of any elector, fill up a nomination paper.

Dated this \_\_\_\_\_ day of December, 1888.

Y. Z.,

Sheriff and Returning Officer.

Take notice, that all persons who are guilty of bribery, treating, undue influence, personation, or other corrupt practices, or any illegal practice, at the said election will, on conviction of such offence, be liable to the penalties mentioned in that behalf in "The Municipal Elections (Corrupt and Illegal Practices) Act, 1884," "The Ballot Act, 1872," the Acts amending the said Acts, and the Local Government Act, 1888.

Also take notice, that by "The Parliamentary Elections (Returning Officers') Act, 1875," it is provided that every person having any claim against a returning officer for work, labour, materials, services, or expenses in respect of any contract made with him by or on behalf of the returning officer, for the purposes of an election (except for publications of account of election expenses), shall, within fourteen days after the day on which the return is made of the person or persons elected at the election, transmit to the returning officer the detailed particulars of such claim in writing, and the returning officer shall not be liable in respect of anything which is not duly stated in such particulars.

Printed and published by W. A., of

[*Title as in No. 1. ante*, p. 229.]

11.

I hereby give notice that the surnames and other names of all PERSONS VALIDLY NOMINATED as candidates at the above election, with their respective abodes and descriptions, and Notice of candidates validly nominated.\*

\* Prescribed by M.C.A. sch. III. pt. II. r. 15 ; see *ante*, p. 107.



[*Title as in No 1, ante, p. 229.*]

14.

Notice to candidates of nominations.\*

I hereby give you notice that the under-mentioned persons have been NOMINATED AS CANDIDATES at the above election.

Surname.	Other Names.	Abode.	Description.

Dated this                      day of                      , 188 .

(Signed)                      Y. Z.,

Sheriff and Returning Officer [*or Town Clerk*].

To the above named

[*Title as in No. 1., ante, p. 229.*]

15.

Objection to nomination paper.†

I, the undersigned *A. B.*, a candidate [*or the representative of A. B., Esq., a candidate*] at the above election, hereby OBJECT TO THE NOMINATION paper of *C. D., Esq.*, another candidate at the said election on the ground that [*Here state the ground of objection as that the proposer, seconder, or subscribers are not registered electors ; or that an erroneous number on the register has been given ; or that the nomination paper has not been properly delivered, or in due time ; or as the case may be*].

Dated this                      day of                      1889.

(Signed)                      *A. B.*

To

The Returning Officer

\* Prescribed by M.C.A. sch. III. pt. II. r. 8 ; see *ante*, p. 101.

† Prescribed by M.C.A. sch. III. pt. II. r. 13 ; see *ante*, p. 102.



## APP. I.

## 16.

Return to  
clerk of the  
county  
council.\*

## THE LOCAL GOVERNMENT ACT, 1888.

ELECTION of the county council of the county of [Norfolk]  
held on the                      day of January, 1889.

I, the Returning Officer of the county of [Norfolk], do  
hereby certify and return that the names of the PERSONS  
ELECTED as county councillors for the said county are as  
follows :—

A. B. of                                      in the county of

C. D. of                                      in the county of

etc.                      etc.

Dated this                      day of                      1889.

Y. Z.,

Sheriff and Returning Officer.

To the clerk of the  
county council of  
[Norfolk]

## 17.

Summons to  
attend first  
meeting of  
provisional  
council.†

[Title as in No. 16, ante, p. 245.]

I, the Returning Officer at the above election, hereby GIVE  
YOU NOTICE that you have been elected a county councillor for  
the                      electoral division of the county of

And that the FIRST MEETING OF THE PROVISIONAL COUNCIL of  
the said county will be held at                      on                      the

day of                      next at                      o'clock in the  
forenoon. And, by virtue of the provisions of the Local  
Government Act, 1888, I DO HEREBY SUMMON AND REQUIRE  
YOU to attend the said first meeting of the said provisional  
council at the time and place aforesaid. Hereof fail not.  
Given under the seal of my office this                      day of

1889.

Y. Z.,

(L.S.)

Sheriff and Returning Officer.

To  
of

\* Prescribed by L.G.A. s. 75, sub. 8; see *ante*, pp. 108, 150.

† Prescribed by L.G.A. s. 103, sub. 5; see *ante*, pp., 109, 150.

APP. I.

NORFOLK (to wit). Y. Z., Esq., sheriff of the said county to the returning officer of the , electoral division in the said county greeting. By virtue of the Local Government Act, 1888, I require that you forthwith cause [one] county councillor to be elected for the said electoral division according to the provisions of the said Act, and that you return the names of the person elected to me immediately after the said election, together with this writ, so that I may return the names of the person elected to the clerk of the county council as by the said Act I am required to do. Hereof fail not. Given under the seal of my office this day of

18.  
Writ to  
borough  
returning  
officer.\*

188 .

Y. Z.

(L.S.)

Sheriff and Returning Officer.

\* Prescribed by L.G.A. s. 75, sub. 6 ; see ante, p. 58.

## APP. II.

## APPENDIX II.

## OPINIONS OF COUNSEL.

## No. 1.

## QUESTIONS.

1. Does M.C.A. s. 230, sub. 3, apply to the delivery of nomination papers under sch. III. pt. II. r. 7, which provides that such papers must be delivered seven days at least before the day of election? "At least" has been construed to mean clear days, and nomination papers must therefore be delivered more than seven days before the day of election.

2. Does M.C.A. s. 230, sub. 3, apply to any case where more than (or at least) a given number of days (say three) must intervene between a certain date or event and the doing of a certain act? In other words, is not this provision (sub. 3) applicable only to cases where the act must be done within seven days.

## OPINION.

1. I am of opinion that M.C.A. s. 230, sub. 3, does not apply to schedule III. part II. r. 7. That rule does not require the papers to be delivered "*within*" seven days beforehand. On the contrary, it requires that they shall be delivered *more than* seven days beforehand. Sundays, therefore, count.

2. For the same reason the sub-section does not apply in any of the cases put. It applies only where something is required to be done within a certain number of days, e.g. M.C.A. s. 34, sub. 1; s. 68; s. 89, sub. 1.

R. S. WRIGHT.

TEMPLE,  
May, 1883.

**No. 2.**

APP. II.

QUESTIONS.

The 1st of November, 1885, is a Sunday. What is the last day for giving the notice of election, and for delivery of nomination papers? on what day should the mayor attend to hear and decide objections to nomination papers? and when should the publication of the names, etc., of persons validly nominated be made?

OPINION.

The question is not free from difficulty, but we are of opinion that the safest course will be to treat Saturday, the 24th of October, as the last day for the delivery of nominations. We think that the expression "the day of election" in M.C.A. sch. III. p. II. r. 7, would be held to refer to the 1st of November as being the day fixed by the statute, and that the Monday is substituted for the Sunday only for the purposes of the election itself, and not for the purposes of other matters dependent on, or antecedent to, the date of the day of election.

It may be pointed out that at Common Law the election could be held on the Sunday, and that the express prohibition contained in 3 & 4 Will. IV., c. 31, is repealed as to municipal boroughs by the Act of 1882 (the M.C.A.), which by s. 230, sub. 2, does not appoint the Monday as the day of election, but only permits the postponement.

It follows that the day for the mayor's attendance (r. 9) will be Monday, the 26th; the day for publication of the nominations (r. 15) will be Tuesday, the 27th. and the day for publishing notice of the election (s. 54) Thursday, the 22nd October.

RICHARD E. WEBSTER.

R. S. WRIGHT.

15th October, 1885.

**No. 3.**

QUESTIONS.

The 1st of March, 1886, is a Monday. Having regard to the opinion of counsel of the 15th October 1885, what are the proper dates for the different steps in the election of auditors and assessors, on the 1st March, 1862?

OPINION.

The question is, perhaps, of even greater difficulty than the question which arose in relation to the case of the 1st November falling on a Sunday. In that case the opinion was

APP. II.  
—

expressed that “seven days at least before the day of election” would be held to mean seven clear days before the 1st November (as being the day appointed for the election by the statute), and not seven clear days before the 2nd November, to which day the actual election could be postponed under section 230.

In the present case, the 1st March—the day of election—is a Monday, and the last day for delivery of nomination papers is, therefore, *prima facie*, Sunday, the 21st, and the question is—*first*, whether the nominations can be duly delivered on Monday, the 22nd, or ought to be delivered on the Sunday or Saturday preceding; and, *second*, from what day the dependent dates for attendance of the mayor, etc., are to be reckoned.

I am of opinion, *first*, that the nominations can be duly delivered on Monday, the 22nd February. It would, in my opinion, probably be held that their delivery is an act “allowed to be done” on the 21st, and that, as that day happens to be Sunday, the delivery may, under s. 230, sub. 2, be made on Monday, the 22nd.

I am of opinion, *second*, that the dependent dates should, in this case, be reckoned not from Sunday the 21st, but from Monday the 22nd, on the ground that the Monday is the last day for delivery of the nominations. In the former case, if the election could have been held on any one of a number of days, and if the words had been “seven days at least before the last day for holding the election,” I should have come to the like conclusion as in the present case. The difference between the two cases is that, in the former case, there was a single day fixed by the Act for the election, and the dependent dates were fixed by reference to that day, whereas, here, no one day is fixed for the delivery of nominations, which may be delivered any number of days (not less than the specified number) beforehand.

I am, therefore, of opinion that nominations should be received on Monday, the 22nd, and agents, under rule 11, be appointed on that day, and that for the mayor’s attendance, and the withdrawal of nominations, the 23rd is the day.

Even if the above views are wrong, there is little, if, any, practical danger in following them, having regard to M.C.A. s. 72.

R. S. WRIGHT.

TEMPLE,  
13th January, 1886.

## APPENDIX III.

APP. III.

## STATUTES AND RULES.

NOTE.—For a list of the Statutes in this Appendix, see the TABLE OF STATUTES CITED, *ante*, p. xxi. Such Table also shows where each of the Statutes in this Appendix is considered in the text, and thus refers to the pages where any cases decided on any such Statute, may be found.

The asterisks ( \* \* \* ) denote the omission of words which are repealed, obsolete, or irrelevant to the subject-matter of this book.

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6 & 7 VICT. C. 18.

*An Act to amend the Law for the Registration of Persons entitled to vote, and to define certain Rights of voting, and to regulate certain Proceedings in the Election of Members to serve in Parliament for England and Wales.*

[31st May 1843.]

85. \* \* \* It shall be lawful for any candidate, at any election of a member or members to serve in Parliament for any county, city, or borough, previous to the time fixed for taking the poll at such election, to nominate and appoint an agent or agents on his behalf to attend at each or any of the booths appointed for taking the poll at such election, for the purpose of detecting personation; and such candidate shall give notice in writing to the returning officer, or his respective deputy, of the name and address of the person or persons so appointed by him to act as agents for such purpose; and thereupon it shall be lawful for every such agent to attend during the time of polling at the booth or booths for which he shall have been so appointed.

Agents may be appointed by candidates to detect personation at the time of polling.



## APP. III.

Returning officer may order persons charged with personation to be taken into custody.

Vote not to be rejected if questions answered in the affirmative ; but note of protest to be entered against vote in poll-book.

Persons charged with personation to be taken before two justices.

Bail to be taken or person discharged in certain cases ;

but charge may be subsequently inquired into, and persons charged may be re-arrested.

**86.** \* \* \* If at the time any person tenders his vote at such election, or after he has voted, and before he leaves the polling booth, any such agent so appointed as aforesaid shall declare to the returning officer, or his respective deputy, presiding therein, that he verily believes, and undertakes to prove, that the said person so voting is not in fact the person in whose name he assumes to vote, or to the like effect, then and in every such case it shall be lawful for the said returning officer, or his said deputy, and he is hereby required, immediately after such person shall have voted, by word of mouth to order any constable or other peace officer to take the said person so voting into his custody, which said order shall be a sufficient warrant and authority to the said constable or peace officer for so doing: Provided always, that nothing herein contained shall be construed or taken to authorize any returning officer, or his deputy, to reject the vote of any person who shall answer in the affirmative the questions authorized by this Act to be put to him at the time of polling, and shall take the oaths or make the affirmations authorized and required of him ; but the said returning officer, or his deputy, shall cause the words " protested against for personation," to be placed against the vote of the person so charged with personation when entered in the poll-book.

**87.** \* \* \* Every such constable or peace officer shall take the person so in his custody, at the earliest convenient time, before some two justices of the peace acting in and for the county, city, or borough within which the said person shall have so voted as aforesaid: Provided always, that in case the attendance of two such justices as aforesaid cannot be procured within the space of three hours after the close of the poll on the same day on which such person shall have been so taken into custody, it shall be lawful for the said constable or peace officer, and he is hereby required, at the request of such person so in his custody, to take him before any one justice of the peace acting as aforesaid, and such justice is hereby authorized and required to liberate such person on his entering into a recognizance, with one sufficient surety, conditioned to appear before any two such justices as aforesaid, at a time and place to be specified in such recognizance, to answer the said charge ; and if no such justice shall be found within four hours after the closing of the said poll then such person shall forthwith be discharged from custody: Provided also, that if in consequence of the absence of such justices as aforesaid, or for any other cause, the said charge cannot be inquired into within the time aforesaid, it shall be lawful nevertheless for any two such justices as aforesaid to inquire into the same on the next or on some other subsequent day, and, if necessary, to issue their warrant for the apprehension of the person so charged.

88. \* \* \* If on the hearing of the said charge the said two justices shall be satisfied, upon the evidence on oath of not less than two credible witnesses, that the said person so brought before them has knowingly personated and falsely assumed to vote in the name of some other person within the meaning of this Act, and is not in fact the person in whose name he voted, then it shall be lawful for the said two justices to commit the said offender to the gaol of the county, city, or borough within which the offence was committed, to take his trial according to law, and to bind over the witnesses in their respective recognizances to appear and give evidence on such trial as in the case of other misdemeanors.

ART. III.

If justices are satisfied that the person charged has been guilty of personation, they are to commit him for trial.

89. \* \* \* If the said justices shall on the hearing of the said charge be satisfied that the said person so charged with personation is really and in truth the person in whose name he voted, and that the charge of personation has been made against him without reasonable or just cause, or if the agent so declaring as aforesaid, or some one on his behalf, shall not appear to support such charge before the said justices, then it shall be lawful for the said justices, and they are hereby required, to make an order in writing under their hands, on the said agent so declaring as aforesaid, to pay to the said person so falsely charged, if he shall consent to accept the same, any sum not exceeding the sum of ten pounds nor less than five pounds, by way of damages and costs; and if the said sum shall not be paid within twenty-four hours after such order shall have been made, then the same shall be levied, by warrant under the hand and seal of any justice of the peace acting as aforesaid, by distress and sale of the goods and chattels of the said agent; and in case no sufficient goods or chattels of the said agent can be found on which such levy can be made, then the same shall be levied in like manner on the goods and chattels of the candidate by whom such agent was so appointed to act; and in case the said sum shall not be paid or levied in the manner aforesaid, then it shall be lawful for the said person to whom the said sum of money was so ordered to be paid to recover the same from the said agent or candidate, with full costs of suit, in an action of debt to be brought in any one of her Majesty's superior courts of record at Westminster: Provided always, that if the person so falsely charged shall have declared to the said justices his consent to accept such sum as aforesaid by way of damages and costs, and if the whole amount of the sum so ordered to be paid shall have been paid or tendered to such person, in every such case, but not otherwise, the said agent, candidate, and every other person shall be released from all actions or other proceedings, civil or criminal, for or in respect of the said charge and apprehension.

If justices are satisfied that the charge is unfounded, they are to order compensation ;

to be paid by agent or levied by distress on his goods or those of his principal, or recovered by action of debt.

If party falsely charged accepts compensation, no action to be brought.

## THE BALLOT ACT, 1872.

35 &amp; 36 VICT. C. 33.

*An Act to amend the Law relating to Procedure at Parliamentary and Municipal Elections.* [18th July 1872.]

## PART I.

## PARLIAMENTARY ELECTIONS.

*Procedure at Elections.*

Poll at elections.

**2.** In the case of a poll at an election the votes shall be given by ballot. The ballot of each voter shall consist of a paper (in this Act called a ballot paper) showing the names and description of the candidates. Each ballot paper shall have a number printed on the back, and shall have attached a counterfoil with the same number printed on the face. At the time of voting, the ballot paper shall be marked on both sides with an official mark, and delivered to the voter within the polling station, and the number of such voter on the register of voters shall be marked on the counterfoil, and the voter having secretly marked his vote on the paper, and folded it up so as to conceal his vote, shall place it in a closed box in the presence of the officer presiding at the polling station (in this Act called "the presiding officer") after having shown to him the official mark at the back.

Any ballot paper which has not on its back the official mark, or on which votes are given to more candidates than the voter is entitled to vote for, or on which anything, except the said number on the back, is written or marked by which the voter can be identified, shall be void and not counted.

After the close of the poll the ballot boxes shall be sealed up, so as to prevent the introduction of additional ballot papers, and shall be taken charge of by the returning officer, and that officer shall, in the presence of such agents, if any, of the candidates as may be in attendance, open the ballot boxes, and ascertain the result of the poll by counting the votes given to each candidate, and shall forthwith declare to be elected the candidates or candidate to whom the majority of votes have been given, and return their names to the Clerk of the Crown in Chancery. The decision of the returning officer as to any question arising in respect of any ballot paper shall be final, subject to reversal on petition questioning the election or return.

*Offences at Elections.*

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3. Every person who,—

- (2.) Forges or counterfeits or fraudulently defaces or fraudulently destroys any ballot paper or the official mark on any ballot paper ; or
- (3.) Without due authority supplies any ballot paper to any person ; or
- (4.) Fraudulently puts into any ballot box any paper other than the ballot paper which he is authorized by law to put in ; or
- (5.) Fraudulently takes out of the polling station any ballot paper ; or
- (6.) Without due authority destroys, takes, opens, or otherwise interferes with any ballot box or packet of ballot papers then in use for the purposes of the election ;

Offences in respect of nomination papers, ballot papers, and ballot boxes.

shall be guilty of a misdemeanor, and be liable, if he is a returning officer or an officer or clerk in attendance at a polling station, to imprisonment for any term not exceeding two years, with or without hard labour, and if he is any other person, to imprisonment for any term not exceeding six months, with or without hard labour.

Any attempt to commit any offence specified in this section shall be punishable in the manner in which the offence itself is punishable.

In any indictment or other prosecution for an offence in relation to the nomination papers, ballot boxes, ballot papers, and marking instruments at an election, the property in such papers, boxes, and instruments may be stated to be in the returning officer at such election, as well as the property in the counterfoils.

4. Every officer, clerk, and agent in attendance at a polling station shall maintain and aid in maintaining the secrecy of the voting in such station, and shall not communicate, except for some purpose authorized by law, before the poll is closed, to any person any information as to the name or number on the register of voters of any elector who has or has not applied for a ballot paper or voted at that station, or as to the official mark, and no such officer, clerk, or agent, and no person whosoever, shall interfere with or attempt to interfere with a voter when marking his vote, or otherwise attempt to obtain in the polling station information as to the candidate for whom any voter in such station is about to vote or has voted, or communicate at any time to any person any information obtained in a polling station as to the candidate for whom any voter in such station is about to vote or has voted, or as to the number on the back of the ballot paper given to any voter at such station. Every officer, clerk, and agent in attendance at

Infringement of secrecy.

## APP. III.

the counting of the votes shall maintain and aid in maintaining the secrecy of the voting, and shall not attempt to ascertain at such counting the number on the back of any ballot paper, or communicate any information obtained at such counting as to the candidate for whom any vote is given in any particular ballot paper. No person shall directly or indirectly induce any voter to display his ballot paper after he shall have marked the same, so as to make known to any person the name of the candidate for or against whom he has so marked his vote.

Every person who acts in contravention of the provisions of this section shall be liable, on summary conviction before two justices of the peace, to imprisonment for any term not exceeding six months, with or without hard labour.

*Amendment of Law.*

Use of school  
and public  
room for poll.

6. The returning officer at a parliamentary election may use, free of charge, for the purpose of taking the poll at such election, any room in a school receiving a grant out of moneys provided by Parliament, and any room the expense of maintaining which is payable out of any local rate, but he shall make good any damage done to such room, and defray any expense incurred by the person or body of persons, corporate or unincorporate, having control over the same on account of its being used for the purpose of taking the poll as aforesaid.

The use of any room in an unoccupied house for the purpose of taking the poll shall not render any person liable to be rated or to pay any rate for such house.

*Duties of Returning and Election Officers.*

General  
powers and  
duties of  
returning  
officer.

8. Subject to the provisions of this Act, every returning officer shall provide such nomination papers, polling stations, ballot boxes, ballot papers, stamping instruments, copies of register of voters, and other things, appoint and pay such officers, and do such other acts and things as may be necessary for effectually conducting an election in manner provided by this Act.

All expenses properly incurred by any returning officer in carrying into effect the provisions of this Act, in the case of any parliamentary election, shall be payable in the same manner as expenses incurred in the erection of polling booths at such election are by law payable.

Keeping of  
order in  
station.

9. If any person misconducts himself in the polling station, or fails to obey the lawful orders of the presiding officer, he may immediately, by order of the presiding officer, be removed from the polling station by any constable in or near that station, or any other person authorized in writing by the returning officer to remove him; and the person so removed shall not, unless with the permission of the presiding officer, again be allowed to enter the polling station during the day.



Any person so removed as aforesaid, if charged with the commission in such station of any offence, may be kept in custody until he can be brought before a justice of the peace.

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—

Provided that the powers conferred by this section shall not be exercised so as to prevent any elector who is otherwise entitled to vote at any polling station from having an opportunity of voting at such station.

10. For the purpose of the adjournment of the poll, and of every other enactment relating to the poll, a presiding officer shall have the power by law belonging to a deputy returning officer; and any presiding officer and any clerk appointed by the returning officer to attend at a polling station shall have the power of asking the questions and administering the oath authorized by law to be asked of and administered to voters, and any justice of the peace and any returning officer may take and receive any declaration authorized by this Act to be taken before him.

Powers of presiding officer and administration of oaths, &c.

11. Every returning officer, presiding officer, and clerk who is guilty of any wilful misfeasance or any wilful act or omission in contravention of this Act shall, in addition to any other penalty or liability to which he may be subject, forfeit to any person aggrieved by such misfeasance, act, or omission a penal sum not exceeding one hundred pounds.

Liability of officers for misconduct.

Section fifty of the Representation of the People Act, 1867, (which relates to the acting of any returning officer, or his partner or clerk, as agent for a candidate,) shall apply to any returning officer or officer appointed by him in pursuance of this Act, and to his partner or clerk.

30 & 31 Vict. c. 102.

### Miscellaneous.

13. No election shall be declared invalid by reason of a non-compliance with the rules contained in the First Schedule to this Act, or any mistake in the use of the forms in the Second Schedule to this Act, if it appears to the tribunal having cognizance of the question that the election was conducted in accordance with the principles laid down in the body of this Act, and that such non-compliance or mistake did not affect the result of the election.

Non-compliance with rules.

14. Where a parliamentary borough and municipal borough occupy the whole or any part of the same area, any ballot boxes or fittings for polling stations and compartments provided for such parliamentary borough or such municipal borough may be used in any municipal or parliamentary election in such borough free of charge, and any damage other than reasonable wear and tear caused to the same shall be paid as part of the expenses of the election at which they are so used.

Use of municipal ballot boxes, &c. for parliamentary election, and vice versa.

15. This part of this Act shall, so far as is consistent with

Construction of Act.



APP. III.

the tenor thereof, be construed as one with the enactments for the time being in force relating to the representation of the people, and to the registration of persons entitled to vote at the election of members to serve in Parliament, and with any enactments otherwise relating to the subject-matter of this part of this Act, and terms used in this part of this Act shall have the same meaning as in the said enactments; and in construing the said enactments relating to an election or to the poll or taking the votes by poll, the mode of election and of taking the poll established by this Act shall for the purposes of the said enactments be deemed to be substituted for the mode of election or poll, or taking the votes by poll, referred to in the said enactments; and any person applying for a ballot paper under this Act shall be deemed "to tender his vote," or "to assume to vote," within the meaning of the said enactments; and any application for a ballot paper under this Act, or expressions relative thereto, shall be equivalent to "voting" in the said enactments and any expressions relative thereto; and the term "polling booth" as used in the said enactments shall be deemed to include a polling station; and the term "proclamation" as used in the said enactments shall be deemed to include a public notice given in pursuance of this Act.

## PART III.

## PERSONATION.

Definition and  
punishment of  
personation.

**24.** The following enactments shall be made with respect to personation at parliamentary and municipal elections:—

A person shall for all purposes of the laws relating to parliamentary and municipal elections be deemed to be guilty of the offence of personation who at an election for a county or borough, or at a municipal election, applies for a ballot paper in the name of some other person, whether that name be that of a person living or dead or of a fictitious person, or who having voted once at any such election applies at the same election for a ballot paper in his own name.

The offence of personation, or of aiding, abetting, counselling, or procuring the commission of the offence of personation by any person, shall be a felony, and any person convicted thereof shall be punished by imprisonment for a term not exceeding two years together with hard labour. It shall be the duty of the returning officer to institute a prosecution against any person whom he may believe to have been guilty of personation, or of aiding, abetting, counselling, or procuring the commission of the offence of personation by any person, at the election for which he is returning officer, and the costs and expenses of the prosecutor and the witnesses in such case,

together with compensation for their trouble and loss of time, shall be allowed by the court in the same manner in which courts are empowered to allow the same in cases of felony.

The provisions of the Registration Acts, specified in the Third Schedule to this Act, shall in England and Ireland respectively apply to personation under this Act in the same manner as they apply to a person who knowingly personates and falsely assumes to vote in the name of another person as mentioned in the said Acts.

## PART IV.

### MISCELLANEOUS.

**28.** The schedules to this Act, and the notes thereto, and directions therein, shall be construed and have effect as part of this Act. Effect of schedules.

## SCHEDULES.

### FIRST SCHEDULE.

#### PART I.

#### RULES FOR PARLIAMENTARY ELECTIONS.

##### *The Poll.*

**15.** At every polling place the returning officer shall provide a sufficient number of polling stations for the accommodation of the electors entitled to vote at such polling place, and shall distribute the polling stations amongst those electors in such manner as he thinks most convenient. \* \* \*

**17.** A separate room or separate booth may contain a separate polling station, or several polling stations may be constructed in the same room or booth.

**18.** No person shall be admitted to vote at any polling station except the one allotted to him.

**20.** The returning officer shall provide each polling station with materials for voters to mark the ballot papers, with instruments for stamping thereon the official mark, and with copies of the register of voters, or such part thereof as contains the names of the voters allotted to vote at such station. He shall keep the official mark secret, and an interval of not less than seven years shall intervene between the use of the same official mark at elections for the same county or borough.

**21.** The returning officer shall appoint a presiding officer to

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preside at each station, and the officer so appointed shall keep order at his station, shall regulate the number of electors to be admitted at a time, and shall exclude all other persons except the clerks, the agents of the candidates, and the constables on duty.

22. Every ballot paper shall contain a list of the candidates described as in their respective nomination papers, and arranged alphabetically in the order of their surnames, and (if there are two or more candidates with the same surname) of their other names: it shall be in the form set forth in the Second Schedule to this Act or as near thereto as circumstances admit, and shall be capable of being folded up.

23. Every ballot box shall be so constructed that the ballot papers can be introduced therein, but cannot be withdrawn therefrom, without the box being unlocked. The presiding officer at any polling station, just before the commencement of the poll, shall show the ballot box empty to such persons, if any, as may be present in such station, so that they may see that it is empty, and shall then lock it up, and place his seal upon it in such manner as to prevent its being opened without breaking such seal, and shall place it in his view for the receipt of ballot papers, and keep it so locked and sealed.

24. Immediately before a ballot paper is delivered to an elector, it shall be marked on both sides with the official mark, either stamped or perforated, and the number, name, and description of the elector as stated in the copy of the register shall be called out, and the number of such elector shall be marked on the counterfoil, and a mark shall be placed in the register against the number of the elector, to denote that he has received a ballot paper, but without showing the particular ballot paper which he has received.

25. The elector, on receiving the ballot paper, shall forthwith proceed into one of the compartments in the polling station, and there mark his paper, and fold it up so as to conceal his vote, and shall then put his ballot paper, so folded up, into the ballot box; he shall vote without undue delay, and shall quit the polling station as soon as he has put his ballot paper into the ballot box.

26. The presiding officer, on the application of any voter who is incapacitated by blindness or other physical cause from voting in manner prescribed by this Act, or (if the poll be taken on Saturday) of any voter who declares that he is of the Jewish persuasion, and objects on religious grounds to vote in manner prescribed by this Act, or of any voter who makes such a declaration as hereinafter mentioned that he is unable to read, shall, in the presence of the agents of the candidates, cause the vote of such voter to be marked on a ballot paper in manner directed by such voter, and the ballot paper to be placed in the ballot box, and the name and number on the

register of voters of every voter whose vote is marked in pursuance of this rule, and the reason why it is so marked, shall be entered on a list, in this Act called "the list of votes marked by the presiding officer."

The said declaration, in this Act referred to as "the declaration of inability to read," shall be made by the voter at the time of polling, before the presiding officer, who shall attest it in the form hereinafter mentioned, and no fee, stamp, or other payment shall be charged in respect of such declaration, and the said declaration shall be given to the presiding officer at the time of voting.

27. If a person, representing himself to be a particular elector named on the register, applies for a ballot paper after another person has voted as such elector, the applicant shall, upon duly answering the questions and taking the oath permitted by law to be asked of and to be administered to voters at the time of polling, be entitled to mark a ballot paper in the same manner as any other voter, but the ballot paper (in this Act called a tendered ballot paper) shall be of a colour differing from the other ballot papers, and, instead of being put into the ballot box, shall be given to the presiding officer and endorsed by him with the name of the voter and his number in the register of voters, and set aside in a separate packet, and shall not be counted by the returning officer. And the name of the voter and his number on the register shall be entered on a list, in this Act called the tendered votes list.

28. A voter who has inadvertently dealt with his ballot paper in such manner that it cannot be conveniently used as a ballot paper, may, on delivering to the presiding officer the ballot paper so inadvertently dealt with, and proving the fact of the inadvertence to the satisfaction of the presiding officer, obtain another ballot paper in the place of the ballot paper so delivered up (in this Act called a spoilt ballot paper), and the spoilt ballot paper shall be immediately cancelled.

29. The presiding officer of each station, as soon as practicable after the close of the poll, shall, in the presence of the agents of the candidates, make up into separate packets sealed with his own seal and the seals of such agents of the candidates as desire to affix their seals,—

- (1.) Each ballot box in use at his station, unopened but with the key attached ; and
- (2.) The unused and spoilt ballot papers placed together ; and
- (3.) The tendered ballot papers ; and
- (4.) The marked copies of the register of voters, and the counterfoils of the ballot papers ; and
- (5.) The tendered votes list, and the list of votes marked by the presiding officer, and a statement of the number of the voters whose votes are so marked by the pre-

siding officer under the heads "physical incapacity," "Jews," and "unable to read," and the declarations of inability to read ;  
and shall deliver such packets to the returning officer.

30. The packets shall be accompanied by a statement made by such presiding officer, showing the number of ballot papers entrusted to him, and accounting for them under the heads of ballot papers in the ballot box, unused, spoilt, and tendered ballot papers, which statement is in this Act referred to as the ballot paper account.

### *Counting Votes.*

31. The candidates may respectively appoint agents to attend the counting of the votes.

32. The returning officer shall make arrangements for counting the votes in the presence of the agents of the candidates as soon as practicable after the close of the poll, and shall give to the agents of the candidates appointed to attend at the counting of the votes notice in writing of the time and place at which he will begin to count the same.

33. The returning officer, his assistants and clerks, and the agents of the candidates, and no other person, except with the sanction of the returning officer, may be present at the counting of the votes.

34. Before the returning officer proceeds to count the votes, he shall, in the presence of the agents of the candidates, open each ballot box, and, taking out the papers therein, shall count and record the number thereof, and then mix together the whole of the ballot papers contained in the ballot boxes. The returning officer, while counting and recording the number of ballot papers and counting the votes, shall keep the ballot papers with their faces upwards, and take all proper precautions for preventing any person from seeing the numbers printed on the backs of such papers.

35. The returning officer shall, so far as practicable, proceed continuously with counting the votes, allowing only time for refreshment, and excluding (except so far as he and the agents otherwise agree) the hours between seven o'clock at night and nine o'clock on the succeeding morning. During the excluded time the returning officer shall place the ballot papers and other documents relating to the election under his own seal and the seals of such of the agents of the candidates as desire to affix their seals, and shall otherwise take proper precautions for the security of such papers and documents.

36. The returning officer shall endorse "rejected" on any ballot paper which he may reject as invalid, and shall add to the endorsement "rejection objected to," if an objection



be in fact made by any agent to his decision. The returning officer shall report to the Clerk of the Crown in Chancery the number of ballot papers rejected and not counted by him under the several heads of—

1. Want of official mark ;
2. Voting for more candidates than entitled to ;
3. Writing or mark by which voter could be identified ;
4. Unmarked or void for uncertainty ;

and shall on request allow any agents of the candidates, before such report is sent, to copy it.

37. Upon the completion of the counting, the returning officer shall seal up in separate packets the counted and rejected ballot papers. He shall not open the sealed packet of tendered ballot papers or marked copy of the register of voters and counterfoils, but shall proceed, in the presence of the agents of the candidates, to verify the ballot paper account given by each presiding officer by comparing it with the number of ballot papers recorded by him as aforesaid, and the unused and spoilt ballot papers in his possession and the tendered votes list, and shall reseal each sealed packet after examination. The returning officer shall report to the Clerk of the Crown in Chancery the result of such verification, and shall, on request, allow any agents of the candidates, before such report is sent, to copy it.

38. Lastly, the returning officer shall forward to the Clerk of the Crown in Chancery (in manner in which the poll books are by any existing enactment required to be forwarded to such clerk, or as near thereto as circumstances admit) all the packets of ballot papers in his possession, together with the said reports, the ballot paper accounts, tendered votes lists, lists of votes marked by the presiding officer, statements relating thereto, declarations of inability to read, and packets of counterfoils, and marked copies of registers, sent by each presiding officer, endorsing on each packet a description of its contents and the date of the election to which they relate, and the name of the county or borough for which such election was held ; and the term poll book in any such enactment shall be construed to include any document forwarded in pursuance of this rule.

39. The Clerk of the Crown shall retain for a year all documents relating to an election forwarded to him in pursuance of this Act by a returning officer, and then, unless otherwise directed by an order of the House of Commons, or of one of Her Majesty's Superior Courts, shall cause them to be destroyed.

40. No person shall be allowed to inspect any rejected ballot papers in the custody of the Clerk of the Crown in Chancery, except under the order of the House of Commons or under the order of one of Her Majesty's Superior Courts, to



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be granted by such court on being satisfied by evidence on oath that the inspection or production of such ballot papers is required for the purpose of instituting or maintaining a prosecution for an offence in relation to ballot papers, or for the purpose of a petition questioning an election or return; and any such order for the inspection or production of ballot papers may be made subject to such conditions as to persons, time, place, and mode of inspection or production as the House or court making the same may think expedient, and shall be obeyed by the Clerk of the Crown in Chancery. Any power given to a court by this rule may be exercised by any judge of such court at chambers.

41. No person shall, except by order of the House of Commons or any tribunal having cognizance of petitions complaining of undue returns or undue elections, open the sealed packet of counterfoils after the same has been once sealed up, or be allowed to inspect any counted ballot papers in the custody of the Clerk of the Crown in Chancery; such order may be made subject to such conditions as to persons, time, place, and mode of opening or inspection as the House or tribunal making the order may think expedient; provided that on making and carrying into effect any such order, care shall be taken that the mode in which any particular elector has voted shall not be discovered until he has been proved to have voted, and his vote has been declared by a competent court to be invalid.

42. All documents forwarded by a returning officer in pursuance of this Act to the Clerk of the Crown in Chancery, other than ballot papers and counterfoils, shall be open to public inspection at such time and under such regulations as may be prescribed by the Clerk of the Crown in Chancery, with the consent of the Speaker of the House of Commons, and the Clerk of the Crown shall supply copies of or extracts from the said documents to any person demanding the same, on payment of such fees and subject to such regulations as may be sanctioned by the Treasury.

43. Where an order is made for the production by the Clerk of the Crown in Chancery of any document in his possession relating to any specified election, the production by such clerk or his agent of the document ordered, in such manner as may be directed by such order, or by a rule of the court having power to make such order, shall be conclusive evidence that such document relates to the specified election; and any endorsement appearing on any packet of ballot papers produced by such Clerk of the Crown or his agent shall be evidence of such papers being what they are stated to be by the endorsement. The production from proper custody of a ballot paper purporting to have been used at any election, and of a counterfoil marked with the same printed number and

having a number marked thereon in writing, shall be *primâ facie* evidence that the person who voted by such ballot paper was the person who at the time of such election had affixed to his name in the register of voters at such election the same number as the number written on such counterfoil.

APP. III.  
—*General Provisions.*

45. The returning officer shall, as soon as possible, give public notice of the names of the candidates elected, and, in the case of a contested election, of the total number of votes given for each candidate, whether elected or not.

46. Where the returning officer is required or authorized by this Act to give any public notice, he shall carry such requirement into effect by advertisements, placards, handbills, or such other means as he thinks best calculated to afford information to the electors.

47. The returning officer may, if he think fit, preside at any polling station, and the provisions of this Act relating to a presiding officer shall apply to such returning officer with the necessary modifications as to things to be done by the returning officer to the presiding officer, or the presiding officer to the returning officer.

48. In the case of a contested election for any county or borough, the returning officer may, in addition to any clerks, appoint competent persons to assist him in counting the votes.

49. No person shall be appointed by a returning officer for the purposes of an election who has been employed by any other person in or about the election.

50. The presiding officer may do, by the clerks appointed to assist him, any act which he is required or authorized to do by this Act at a polling station except ordering the arrest, exclusion, or ejection from the polling station of any person.

51. A candidate may himself undertake the duties which any agent of his if appointed might have undertaken, or may assist his agent in the performance of such duties, and may be present at any place at which his agent may, in pursuance of this Act, attend.

52. The name and address of every agent of a candidate, appointed to attend the counting of the votes shall be transmitted to the returning officer one clear day at the least before the opening of the poll; and the returning officer may refuse to admit to the place where the votes are counted any agent whose name and address has not been so transmitted, notwithstanding that his appointment may be otherwise valid, and any notice required to be given to an agent by the returning

APP. III. officer may be delivered at or sent by post to such address.

53. If any person appointed an agent by a candidate for the purposes of attending at the polling station or at the counting of the votes dies, or becomes incapable of acting during the time of the election, the candidate may appoint another agent in his place, and shall forthwith give to the returning officer notice in writing of the name and address of the agent so appointed.

54. Every returning officer, and every officer, clerk, or agent authorized to attend at a polling station, or at the counting of the votes, shall, before the opening of the poll, make a statutory declaration of secrecy, in the presence, if he is the returning officer, of a justice of the peace, and if he is any other officer or an agent, of a justice of the peace or of the returning officer; but no such returning officer, officer, clerk, or agent as aforesaid shall, save as aforesaid, be required, as such, to make any declaration or take any oath on the occasion of any election.

55. Where in this Act any expressions are used requiring or authorizing or inferring that any act or thing is to be done in the presence of the agents of the candidates, such expressions shall be deemed to refer to the presence of such agents of the candidates as may be authorized to attend, and as have in fact attended, at the time and place where such act or thing is being done, and the non-attendance of any agents or agent at such time and place shall not, if such act or thing be otherwise duly done, in anywise invalidate the act or thing done.

56. In reckoning time for the purposes of this Act, Sunday, Christmas-day, Good Friday, and any day set apart for a public fast or public thanksgiving, shall be excluded; and where anything is required by this Act to be done on any day which falls on the above-mentioned days such thing may be done on the next day, unless it is one of the days excluded as above mentioned.

57. In this Act—

The expression “polling place” means, in the case of a borough, such borough or any part thereof in which a separate booth is required or authorized by law to be provided; and

The expression “agents of the candidates,” used in relation to a polling station, means agents appointed in pursuance of section eighty-five of the Act of the session of the sixth and seventh years of the reign of Her present Majesty, chapter eighteen.

PART II.

RULES FOR MUNICIPAL ELECTIONS.

64. In the application of the provisions of this schedule to municipal elections the following modifications shall be made:—

(a.) The expression “register of voters” means the Burgess roll of the burgesses of the borough, or, in the case of an election for the ward of a borough, the ward list; and the mayor shall provide true copies of such register for each polling station;

(b.) All ballot papers and other documents which, in the case of a parliamentary election, are forwarded to the Clerk of the Crown in Chancery shall be delivered to the town clerk of the municipal borough in which the election is held, and shall be kept by him among the records of the borough; and the provisions of part one of this schedule with respect to the inspection, production, and destruction of such ballot papers and documents, and to the copies of such documents, shall apply respectively to the ballot papers and documents so in the custody of the town clerk, with these modifications; namely,

(a.) An order of the county court having jurisdiction in the borough, or any part thereof, or of any tribunal in which a municipal election is questioned, shall be substituted for an order of the House of Commons, or of one of Her Majesty’s Superior Courts; but an appeal from such county court may be had in like manner as in other cases in such county court;

(b.) The regulations for the inspection of documents and the fees for the supply of copies of documents of which copies are directed to be supplied, shall be prescribed by the council of the borough with the consent of one of Her Majesty’s Principal Secretaries of State; and, subject as aforesaid, the town clerk, in respect of the custody and destruction of the ballot papers and other documents coming into his possession in pursuance of this Act, shall be subject to the directions of the council of the borough;

(c.) Nothing in this schedule with respect to the day of the poll shall apply to a municipal election.

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38 &amp; 39 VICT. C. 84.

*An Act to regulate the Expenses and to control the Charges of Returning Officers at Parliamentary Elections.*

[13th August 1875.]

The accounts  
of a returning  
officer may be  
taxed.

4. Within twenty-one days after the day on which the return is made of the persons elected at the election, the returning officer shall transmit to every candidate or other person from whom he claims payment either out of any deposit or otherwise of any charges in respect of the election, or to the agent for election expenses of any such candidate, a detailed account showing the amounts of all the charges claimed by the returning officer in respect of the election, and the share thereof which he claims from the person to whom the account is transmitted. He shall annex to the account a notice of the place where the vouchers relating to the account may be seen, and he shall at all reasonable times and without charge allow the person from whom payment is claimed, or any agent of such person, to inspect and take copies of the vouchers.

The returning officer shall not be entitled to any charges which are not duly included in his account.

If the person from whom payment is claimed objects to any part of the claim, he may, at any time within fourteen days from the time when the account is transmitted to him, apply to the court as defined in this section for a taxation of the account, and the court shall have jurisdiction to tax the account in such manner and at such time and place as the court thinks fit, and finally to determine the amount payable to the returning officer and to give and enforce judgment for the same as if such judgment were a judgment in an action in such court, and with or without costs at the discretion of the court.

The court for the purposes of this Act shall be in the City of London the Lord Mayor's Court, and elsewhere in England the County Court, and in Ireland the Civil Bill Court, having jurisdiction at the place of nomination for the election to which the proceedings relate.

The court may depute any of its powers or duties under this Act to the registrar or other principal officer of the court.

Nothing in this section shall apply to the charge of the returning officer for publication of accounts of election expenses.

Claims against  
a returning  
officer.

5. Every person having any claim against a returning officer for work, labour, materials, services, or expenses in respect of any contract made with him by or on behalf of the returning officer for the purposes of an election, except for publication of accounts of election expenses, shall, within fourteen days after the day on which the return is made of the person or persons elected at the election, transmit to the returning officer the detailed particulars of such claim in writing, and the returning



officer shall not be liable in respect of anything which is not duly stated in such particulars.

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Where application is made for taxation of the accounts of a returning officer, he may apply to the court as defined in this Act to examine any claim transmitted to him by any person in pursuance of this section, and the court after notice given to such person, and after hearing him, and any evidence tendered by him, may allow or disallow, or reduce the claim objected to, with or without costs, and the determination of the court shall be final for all purposes, and as against all persons.

6. In any case to which the fourteenth section of the Ballot Act, 1872, is applicable, it shall be the duty of the returning officer, so far as is practicable, to make use of ballot boxes, fittings, and compartments provided for municipal or school board elections, and the court, upon taxation of his accounts, shall have regard to the provisions of this section.

Use of ballot boxes, &c., provided for municipal elections.

7. There shall be added to every notice of election to be published under the provisions of the Ballot Act, 1872, the notification contained in the second schedule to this Act with respect to claims against returning officers.

Notices to be given by returning officers.

## SCHEDULES.

### FIRST SCHEDULE.

#### CHARGES OF RETURNING OFFICERS.

The following are the maximum charges to be made by the returning officer, but the charges are in no case to exceed the sums actually and necessarily paid or payable.

#### PART I.—COUNTIES AND DISTRICT OR CONTRIBUTORY BOROUGHES.

*This part of this Schedule applies to an election for a county, or for either of the boroughs of Aylesbury, Cricklade, Monmouth, East Retford, Stroud, and New Shorcham, or for any borough or burgh consisting of a combination of separate boroughs, burghs, or towns.*

	£	s.	d.
For preparing and publishing the notice of election	2	2	0
For preparing and supplying the nomination papers	1	1	0



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For travelling to and from the place of nomination, or of declaring the poll at a contested election, per mile.

£ s. d.  
0 1 0

For hire or necessary fitting up of rooms or buildings for polling, or damage or expenses by or for use of such rooms or buildings.

The necessary expenses, not exceeding at any one polling station the charge for constructing and fitting a polling station.

7 7 0

For constructing a polling station, with its fittings and compartments, in England. \* \* \*

For each ballot box required to be purchased

1 1 0

For the use of each ballot box, when hired

0 5 0

For stationery at each polling station

0 10 0

For printing and providing ballot papers, per thousand

1 10 0

For each stamping instrument . . .

0 10 0

For copies of the register . . .

The sums payable by statute for the necessary copies.

3 3 0

For each presiding officer . . .

1 1 0

For one clerk at each polling station where not more than 500 voters are assigned to such station

For an additional clerk at a polling station for every number of 500 voters, or fraction thereof beyond the first 500 assigned to such polling station.

1 1 0

For every person employed in counting votes, not exceeding six such persons where the number of registered electors does not exceed 3,000, and one for every additional 2,000 electors.

1 1 0

For making the return to the Clerk of the Crown

1 1 0

For the preparation and publication of notices (other than the notice of election).

Not exceeding for the whole of such notices £20, and £1 for every additional 1,000 electors above 3,000.

0 1 0

For conveyance of ballot boxes from the polling stations to the place where the ballot papers are to be counted, per mile.

	£ s. d.
For professional and other assistance in and about the conduct of the election.	In a contested election not exceeding £25, and an additional £3 for every 1,000 registered electors or fraction thereof above 3,000 and up to 10,000, and £2 for every 1,000 or fraction thereof above 10,000. In an uncontested election, one-fifth of the above sums.
For travelling expenses of presiding officers and clerks, per mile.	0 1 0
For services and expenses in relation to receiving and publishing accounts of election expenses, in respect of each candidate.	2 2 0
For all other expenses . . . . .	In a contested election, not exceeding £10, and an additional £1 for every 1,000 electors or fraction thereof above 1,000. In an uncontested election, nil.

NOTE.—Travelling expenses are not to be allowed in the case of any person unless for distances exceeding two miles from the place at which he resides.

## SECOND SCHEDULE.

### I. NOTIFICATION to be added to the NOTICE of ELECTION.

Take notice, that by the Parliamentary Elections (Returning Officers) Act, 1875, it is provided that every person having any claim against a returning officer for work, labour, materials, services, or expenses in respect of any contract made with him

- APP. III. — by or on behalf of the returning officer, for the purposes of an election (except for publications of account of election expenses), shall, within fourteen days after the day on which the return is made of the person or persons elected at the election, transmit to the returning officer the detailed particulars of such claim in writing, and the returning officer shall not be liable in respect of anything which is not duly stated in such particulars.

## MUNICIPAL CORPORATIONS ACT, 1882.

45 & 46 VICT. C. 50.

*An Act for consolidating, with Amendments, enactments relating to Municipal Corporations in England and Wales.*

[18th August 1882.]

### PART II.

#### CONSTITUTION AND GOVERNMENT OF BOROUGH.

##### *Corporate Name.*

Name of  
municipal  
corporation.

8. The municipal corporation of a borough shall bear the name of the mayor, aldermen, and burgesses of the borough, or, in the case of a city, the mayor, aldermen, and citizens of the city.

##### *Burgesses.*

Qualification  
of burgess.

9.—(1.) A person shall not be deemed a burgess for any purpose of this Act unless he is enrolled as a burgess.

(2.) A person shall not be entitled to be enrolled as a burgess unless he is qualified as follows :—

(a.) Is of full age ; and

(b.) Is on the fifteenth of July in any year, and has been during the whole of the then last preceding twelve months, in occupation, joint or several, of any house, warehouse, counting-house, shop, or other building (in this Act referred to as qualifying property) in the borough ; and

(c.) Has during the whole of those twelve months resided in the borough, or within seven miles thereof ; and

(d.) Has been rated in respect of the qualifying property to all poor rates made during those twelve months for the parish wherein the property is situate ; and

(e.) Has on or before the twentieth of the same July paid all such rates, including borough rates (if any), as have

become payable by him in respect of the qualifying property up to the then last preceding fifth of January.

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(3.) Every person so qualified shall be entitled to be enrolled as a burgess, unless he—

(a.) Is an alien ; or

(b.) Has within the twelve months aforesaid received union or parochial relief or other alms ; or

(c.) Is disentitled under any Act of Parliament.

*Council ; Mayor, Aldermen, and Councillors.*

10.—(1.) The municipal corporation of a borough shall be capable of acting by the council of the borough, and the council shall exercise all powers vested in the corporation by this Act or otherwise. Constitution of council.

(2.) The council shall consist of the mayor, aldermen, and councillors.

11.—(1.) The councillors shall be fit persons elected by the burgesses. Qualification of councillor.

(2.) A person shall not be qualified to be elected or to be a councillor, unless he—

(a.) Is enrolled and entitled to be enrolled as a burgess ; or

(b.) Being entitled to be so enrolled in all respects except that of residence, is resident beyond seven miles but within fifteen miles of the borough, and is entered in the separate non-resident list directed by this Act to be made ; and

(c.) In either of those cases, is seised or possessed of real or personal property or both, to the value or amount, in the case of a borough having four or more wards, of one thousand pounds, and in the case of any other borough, of five hundred pounds, or is rated to the poor rate in the borough, in the case of a borough having four or more wards, on the annual value of thirty pounds, and in the case of any other borough of fifteen pounds.

(3.) Provided, that every person shall be qualified to be elected and to be a councillor, who is, at the time of election, qualified to elect to the office of councillor ; which last-mentioned qualification for being elected shall be alternative for and shall not repeal or take away any other qualification.

(4.) But if a person qualified under the last foregoing proviso ceases for six months to reside in the borough, he shall cease to be qualified under that proviso, and his office shall become vacant, unless he was at the time of his election and continues to be qualified in some other manner.

12.—(1.) A person shall be disqualified for being elected and for being a councillor, if and while he— Disqualifications for being councillor.

(a.) Is an elective auditor or a revising assessor, or holds

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any office or place of profit, other than that of mayor or sheriff, in the gift or disposal of the council; or

(b) Is in holy orders, or the regular minister of a dissenting congregation; or

(c.) Has directly or indirectly, by himself or his partner, any share or interest in any contract or employment with, by, or on behalf of the council:

(2.) But a person shall not be so disqualified, or be deemed to have any share or interest in such a contract or employment, by reason only of his having any share or interest in—

(a.) Any lease, sale, or purchase of land, or any agreement for the same; or

(b.) Any agreement for the loan of money, or any security for the payment of money only; or

(c.) Any newspaper in which any advertisement relating to the affairs of the borough or council is inserted; or

(d.) Any company which contracts with the council for lighting or supplying with water or insuring against fire any part of the borough; or

25 & 26 Vict.  
c. 89.

(e.) Any railway company, or any company incorporated by Act of Parliament or Royal charter, or under the Companies Act, 1862.

Term of office  
and rotation of  
councillors.

**13.—**(1.) The term of office of a councillor shall be three years.

(2.) On the ordinary day of election of councillors in every year one third of the whole number of councillors for the borough or for the ward, as the case may be, shall go out of office, and their places shall be filled by election.

(3.) The third to go out shall be the councillors who have been longest in office without re-election.

Number, term  
of office, and  
rotation of  
aldermen.

**14.—**(1.) The aldermen shall be fit persons elected by the council.

(2.) The number of aldermen shall be one-third of the number of councillors.

(3.) A person shall not be qualified to be elected or to be an alderman unless he is a councillor or qualified to be a councillor.

(4.) If a councillor is elected to, and accepts, the office of alderman he vacates his office of councillor.

(5.) The term of office of an alderman shall be six years.

(6.) On the ordinary day of election of aldermen in every third year one half of the whole number of aldermen shall go out of office, and their places shall be filled by election.

(7.) The half to go out shall be those who have been aldermen for the longest time without re-election.

Qualification,  
term of office,  
salary, pre-  
cedence, and  
powers of  
mayor.

**15.—**(1.) The mayor shall be a fit person elected by the council from among the aldermen or councillors or persons qualified to be such.

(2.) An outgoing alderman is eligible.

(3.) The term of office of the mayor shall be one year, but he shall continue in office until his successor has accepted office and made and subscribed the required declaration.

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—

(4.) He may receive such remuneration as the council think reasonable.

(6.) The mayor of a borough named in the schedules to the Municipal Corporations Act, 1835, shall be capable in law to do and suffer all acts which the chief officer of the borough might at the passing of that Act lawfully do or suffer, as far as the same were not altered or annulled by that Act, or have not been altered or annulled by any subsequent Act.

*Meetings and Proceedings of Council ; Committees.*

**22.**—(1.) The rules in the Second Schedule shall be observed.

*Supplemental and Exceptional Provisions.*

**31.** In and for the purposes of this Act—

Occupation of  
part of house.

(a.) The terms house, warehouse, counting house, shop, or other building include any part of a house, where that part is separately occupied for the purposes of any trade, business, or profession ; and any such part may, for the purpose of describing the qualification, be described as office, chambers, studio, or by any like term applicable to the case.

(b.) Where an occupier is entitled to the sole and exclusive use of any part of a house, that part shall not be deemed to be occupied otherwise than separately by reason only that the occupier is entitled to the joint use of some other part.

**32.**—(1.) If an occupier of any qualifying property, whether the landlord is or is not liable to be rated to the poor rate in respect thereof, claims to be rated to the poor rate in respect thereof, and pays or tenders to the overseers of the parish where the property is situate the full amount of the poor rate last made in respect of the property, the overseers shall put the occupier's name on the rate book in respect of that rate.

Claim by  
occupier to be  
rated.

(2.) If they fail to do so, he shall nevertheless for the purposes of this Act be deemed rated to that rate.

**33.**—(1.) Where a person succeeds to qualifying property by descent, marriage, marriage settlement, devise, or promotion to a benefice or office, then, for the purpose of qualification, the occupancy of the property by a predecessor in title, and the rating of the predecessor in respect thereof, shall be equivalent to the occupancy and rating of the successor ; and rating in the name of the predecessor shall, until a new rate is made after the date of succession, be equivalent to rating in

Rules as to  
qualification  
of burgess on  
succession, &c.



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the name of the successor; and the successor shall not be required to prove his own residence, occupancy, or rating before the succession.

(2.) The qualifying property need not be throughout the twelve months constituting the period of qualification the same property or in the same parish.

(3.) Where by law a borough rate is payable by instalments, payment by any person of any such instalment shall, as regards his qualification to be enrolled as a burgess, be deemed a payment of the borough rate in respect of the period to which the instalment applies.

(4.) A person shall not be disentitled to be enrolled as a burgess by reason only—

(a.) That he has received medical or surgical assistance from the trustees of the municipal charities, or has been removed, by order of a justice, to a hospital or place for reception of the sick, at the cost of any local authority; or

(b.) That his child has been admitted to and taught in any public or endowed school.

Obligation to  
accept office  
or pay fine.

**34.**—(1.) Every qualified person elected to a corporate office, unless exempt under this section or otherwise by law, either shall accept the office by making and subscribing the declaration required by this Act within five days after notice of election, or shall, in lieu thereof, be liable to pay to the council a fine of such amount not exceeding, in case of an alderman, councillor, elective auditor, or revising assessor, fifty pounds, and in case of a mayor one hundred pounds, as the council by byelaw determine.

(2.) If there is no byelaw determining fines, the fine, in case of an alderman, councillor, elective auditor, or revising assessor, shall be twenty-five pounds, and in case of a mayor fifty pounds.

(3.) The persons exempt under this section are—

(a.) Any person disabled by lunacy or imbecility of mind, or by deafness, blindness, or other permanent infirmity of body; and

(b.) Any person who, being above the age of sixty-five years, or having within five years before the day of his election either served the office or paid the fine for non-acceptance thereof, claims exemption within five days after notice of his election.

(4.) A fine payable under this section shall be recoverable summarily.

Declaration  
on acceptance  
of office

**35.** A person elected to a corporate office shall not, until he has made and subscribed before two members of the council, or the town clerk, a declaration as in the Eighth Schedule, act in the office except in administering that declaration.

**36.**—(1.) A person elected to a corporate office may at any time, by writing signed by him and delivered to the town clerk, resign the office, on payment of the fine provided for non-acceptance thereof. APP. III.  
Fine on re-signation, &c.

(2.) In any such case the council shall forthwith declare the office to be vacant, and signify the same by notice in writing, signed by three members of the council and countersigned by the town clerk, and fixed on the town hall, and the office shall thereupon become vacant.

(3.) No person enabled by law to make an affirmation instead of taking an oath shall be liable to any fine for non-acceptance of office by reason of his refusal on conscientious grounds to take any oath or make any declaration required by this Act or to take on himself the duties of the office.

**37.** A person ceasing to hold a corporate office shall, unless disqualified to hold the office, be re-eligible. Re-eligibility of office-holders.

**38.** The mayor and alderman shall, during their respective offices, continue to be members of the council, notwithstanding anything in this Act as to councillors going out of office at the end of three years. Mayor and aldermen to continue members of council.

**39.**—(1.) If the mayor, or an alderman or councillor—

(a.) Is declared bankrupt, or compounds by deed with his creditors, or makes an arrangement or composition with his creditors, under the Bankruptcy Act, 1869, by deed or otherwise; or Avoidance of office by bankruptcy or absence.  
32 & 33 Vict. c. 71.

(b.) Is (except in case of illness) continuously absent from the borough, being mayor, for more than two months, or, being alderman or councillor, for more than six months:

he shall thereupon immediately become disqualified and shall cease to hold the office.

(2.) In any such event the council shall forthwith declare the office to be vacant, and signify the same by notice signed by three members of the council, and countersigned by the town clerk, and fixed on the town hall, and the office shall thereupon become vacant.

(3.) Where a person becomes so disqualified by being declared bankrupt, or compounding, or making an arrangement or composition, as aforesaid, the disqualification, as regards subsequent elections, shall, in case of bankruptcy, cease on his obtaining his order of discharge, and shall, in case of a compounding or composition as aforesaid, cease on payment of his debts in full, and shall, in case of an arrangement as aforesaid, cease on his obtaining his certificate of discharge.

(4.) Where a person becomes so disqualified by absence, he shall be liable to the same fine as for non-acceptance of office, recoverable summarily, but the disqualification shall, as regards subsequent elections, cease on his return.

**40.**—(1.) On a casual vacancy in a corporate office, an Filling of

## APP. III.

casual  
vacancies.

election shall be held by the same persons and in the same manner as an election to fill an ordinary vacancy; and the person elected shall hold the office until the time when the person in whose place he is elected would regularly have gone out of office, and he shall then go out of office.

(2.) In case of more than one casual vacancy in the office of councillor being filled at the same election, the councillor elected by the smallest number of votes shall be deemed to be elected in the place of him who would regularly have first gone out of office, and the councillor elected by the next smallest number of votes shall be deemed to be elected in the place of him who would regularly have next gone out of office, and so with respect to the others; and if there has not been a contested election, or if any doubt arises, the order of rotation shall be determined by the council.

(3.) Non-acceptance of office by a person elected creates a casual vacancy.

Penalty on  
unqualified  
person acting  
in office.

**41.**—(1.) If any person acts in a corporate office without having made the declaration by this Act required, or without being qualified at the time of making the declaration, or after ceasing to be qualified, or after becoming disqualified, he shall for each offence be liable to a fine not exceeding fifty pounds, recoverable by action.

(2.) A person being in fact enrolled in the burgess roll shall not be liable to a fine for acting in a corporate office on the ground only that he was not entitled to be enrolled therein.

Validity of  
acts done  
notwith-  
standing dis-  
qualification,  
&c.

**42.**—(1.) The acts and proceedings of a person in possession of a corporate office, and acting therein, shall, notwithstanding his disqualification or want of qualification, be as valid and effectual as if he had been qualified.

(2.) An election of a person to a corporate office shall not be liable to be questioned by reason of a defect in the title, or want of title, of the person before whom the election was had, if that person was then in actual possession of, or acting in, the office giving the right to preside at the election.

(3.) A burgess roll shall not be liable to be questioned by reason of a defect in the title, or want of title, of the mayor or any revising authority by whom it is revised, if he was then in actual possession and exercise of the office of mayor or revising authority.

Duties of  
town clerk,  
deputy, and  
treasurer,  
during va-  
cancy or  
incapacity.

**43.** If there is no town clerk, and no deputy town clerk, or there is no treasurer, or the town clerk, deputy town clerk, or treasurer (as the case may be) is incapable of acting, all acts by law authorized or required to be done by or with respect to the town clerk or the treasurer (as the case may be) may, subject to the provisions of any other Act, be done by or with respect to a person appointed in that behalf by the mayor.

## PART III.

## PREPARATIONS FOR AND PROCEDURE AT ELECTIONS.

*Election of Councillors.*

**50.**—(1.) Where a borough has no wards, there shall be one election of councillors for the whole borough. Borough and ward elections.'

(2.) Where a borough has wards, there shall be a separate election of councillors for each ward.

**51.**—(1.) At an election of councillors a person shall be entitled to subscribe a nomination paper, and to demand and receive a voting paper, and to vote, if he is enrolled in the burgess roll, or, in the case of a ward election, the ward roll, and not otherwise. Title to vote.

(2.) No person shall subscribe a nomination paper in or for more than one ward, or vote in more than one ward.

(3.) Nothing in this section shall entitle any person to do any act therein mentioned who is prohibited by law from doing it, or relieve him from any penalty to which he may be liable for doing it.

**52.** The ordinary day of election of councillors shall be the first of November. Day of election.

**53.**—(1.) At an election of councillors for a whole borough the returning officer shall be the mayor. Returning officer at election.

(2.) At an election for a ward the returning officer shall be an alderman assigned for that purpose by the council at the meeting of the ninth of November.

**54.** Nine days at least before the day for the election of a councillor, the town clerk shall prepare and sign a notice thereof, and publish it by fixing it on the town hall, and, in the case of a ward election, in some conspicuous place in the ward. Notice of election.

**55.** The nomination of candidates for the office of councillor shall be conducted in accordance with the rules in Part II. of the Third Schedule. Nomination of candidates.

**56.**—(1.) If the number of valid nominations exceeds that of the vacancies, the councillors shall be elected from among the persons nominated. Relation of nomination to election.

(2.) If the number of valid nominations is the same as that of the vacancies, the persons nominated shall be deemed to be elected.

(3.) If the number of valid nominations is less than that of the vacancies, the persons nominated shall be deemed to be elected, and such of the retiring councillors for the borough or ward as were highest on the poll at their election, or, if the poll was equal, or there was no poll, as are selected for that purpose by the mayor, shall be deemed to be re-elected to make up the required number.

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Publication of  
uncontested  
election.

Mode of con-  
ducting poll  
at contested  
election.  
35 & 36 Vict  
c. 33.

(4.) If there is no valid nomination, the retiring councillors shall be deemed to be re-elected.

57. If an election of councillors is not contested, the returning officer shall publish a list of the persons elected not later than eleven o'clock in the morning on the day of election.

—58.(1.) If an election of councillors is contested, the poll shall, as far as circumstances admit, be conducted as the poll at a contested parliamentary election is by the Ballot Act, 1872, directed to be conducted, and, subject to the modifications expressed in Part III. of the Third Schedule, and to the other provisions of this Act, the provisions of the Ballot Act, 1872, relating to a poll at a parliamentary election (including the provisions relating to the duties of the returning officer after the close of the poll), shall apply to a poll at an election of councillors.

(2.) Every person entitled to vote may vote for any number of candidates not exceeding the number of vacancies.

(3.) The poll shall commence at nine o'clock in the forenoon and close at four o'clock in the afternoon of the same day.

(4.) But if one hour elapses during which no vote is tendered, and the returning officer has not received notice that any person has within that hour been prevented from coming to the poll by any riot, violence, or other unlawful means, the returning officer may, if he thinks fit, close the poll at any time before four o'clock.

(5.) Where an equality of votes is found to exist between any candidates, and the addition of a vote would entitle any of those candidates to be declared elected, the returning officer, whether entitled or not to vote in the first instance, may give such additional vote by word of mouth or in writing.

(6.) Nothing in the Ballot Act, 1872, as applied by this Act, shall be deemed to authorize the appointment of any agents of a candidate at a municipal election; but if, in the case of a municipal election, an agent of a candidate is appointed, and notice in writing of the appointment is given to the returning officer, one clear day before the polling day, then the provisions of the Ballot Act, 1872, with respect to agents of candidates, shall, as far as regards that agent, apply in the case of that election.

Questions  
which may  
be put to  
voters.

59.—(1.) At an election of councillors, the presiding officer shall, if required by two burgesses, or by a candidate or his agent, put to any person offering to vote, at the time of his presenting himself to vote, but not afterwards, the following questions, or either of them :

(a.) Are you the person enrolled in the burgess [*or ward*] roll now in force for this borough [*or ward*] as follows [*read the whole entry from the roll*] ?

(b.) Have you already voted at the present election [*add, in*



case of an election for several wards, in this or any other ward] ? APP. III.

(2.) The vote of a person required to answer either of these questions shall not be received until he has answered it.

(3.) If any person wilfully makes a false answer thereto he shall be guilty of a misdemeanour.

(4.) Save as by this Act authorized, no inquiry shall be permitted at an election as to the right of any person to vote.

### *Election of Aldermen.*

60.—(1.) The ordinary day of election of aldermen shall be the ninth of November, and the election shall be held at the quarterly meeting of the council. Time and mode of election of aldermen.

(2.) The election shall be held immediately after the election of the mayor, or, if there is a sheriff, the appointment of the sheriff.

(3.) An outgoing alderman, although mayor elect, shall not vote.

(4.) Every person entitled to vote may vote for any number of persons not exceeding the number of vacancies, by signing and personally delivering at the meeting to the chairman a voting paper containing the surnames and other names and places of abode and descriptions of the persons for whom he votes.

(5.) The chairman, as soon as all the voting papers have been delivered to him, shall openly produce and read them, or cause them to be read, and then deliver them to the town clerk to be kept for twelve months.

(6.) In case of equality of votes the chairman, although as an outgoing alderman or otherwise not entitled to vote in the first instance, shall have the casting vote.

(7.) The persons, not exceeding the number of vacancies, who have the greatest number of votes, shall be declared by the chairman to be, and thereupon shall be, elected.

### *Election of Mayor.*

61.—(1.) The ordinary day of election of mayor shall be the ninth of November. Time and mode of election of mayor.

(2.) The election of mayor shall be the first business transacted at the quarterly meeting of the council on the day of election.

(3.) An outgoing alderman may vote although the person for whom he votes is an alderman.

(4.) In case of equality of votes, the chairman, although not entitled to vote in the first instance, shall have the casting vote.



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*Supplemental and Exceptional Provisions.*

Right of  
women to  
vote.

**63.** For all purposes connected with and having reference to the right to vote at municipal elections words in this Act importing the masculine gender include women.

Polling  
districts.

**64.** The council may divide the borough or any ward into polling districts, and thereupon the overseers shall, as far as practicable, make out the parish burgess lists so as to divide the names in conformity with the polling districts.

Notices as to  
elections.

**65.** Any notice required to be given in connection with a municipal election may, as to elective auditors and revising assessors, be comprised in one notice, and may, as to ward elections, comprise matter necessary for several wards.

Time for  
filling casual  
vacancies.

**66.**—(1.) On a casual vacancy in a corporate office, the election shall be held within fourteen days after notice in writing of the vacancy has been given to the mayor or town clerk by two burgesses.

(2.) Where the office vacant is that of mayor, the notice of the meeting for the election shall be signed by the town clerk.

(3.) In other cases the day of election shall be fixed by the mayor.

Illness, &c.,  
of mayor or  
returning  
officer.

**67.**—(1.) If the mayor is dead, or is absent or otherwise incapable of acting in the execution of his powers and duties as to elections under this Act, the council shall forthwith choose an alderman to execute those powers and duties in the place of the mayor.

(2.) In case of the illness, absence, or incapacity to act of the alderman assigned to be returning officer at a ward election, the mayor may appoint to act in his stead another alderman, or, if the number of aldermen does not exceed the number of wards, a councillor not being a councillor for that ward, and not being enrolled in the ward roll for that ward.

Election of  
councillor in  
more than one  
ward.

**68.** If a person is elected councillor in more than one ward, he shall, within three days after notice thereof, choose, by writing signed by him and delivered to the town clerk, or in his default the mayor shall, within three days after the time for choice has expired, declare, for which of those wards he shall serve, and the choice or declaration shall be conclusive.

Elections not  
in churches.

**69.** A municipal election shall not be held in any church, chapel, or other place of public worship.

Omission to  
hold election,  
or election  
void.

**70.**—(1.) If a municipal election is not held on the appointed day or within the appointed time, it may be held on the day next after that day or the expiration of that time.

(2.) If a municipal election is not held on the appointed day or within the appointed time, or on the day next after that day or the expiration of that time, or becomes void, the municipal corporation shall not thereby be dissolved or be disabled from

electing, but the High Court may, on motion, grant a mandamus for the election to be held on a day appointed by the court.

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(3.) Thereupon public notice of the election shall, by such person as the court directs, be fixed on the town hall, and shall be kept so fixed for at least six days before the day appointed for the election ; and in all other respects the election shall be conducted as directed by this Act respecting ordinary elections.

**71.—(1.)** If a parish burgess list is not made or revised in due time, the corresponding part of the burgess roll in operation before the time appointed for the revision shall be the parish burgess list until a burgess list for the parish has been revised and become part of the burgess roll.

Burgess roll to be in operation until revision of new burgess roll.

(2.) If a burgess roll is not made in due time, the burgess roll in force before the time appointed for the revision shall continue in force until the new burgess roll is made.

**72.** An election shall not be invalidated by non-compliance with the rules in the Third Schedule, or mistake in the use of the forms in the Eighth Schedule, if it appears to the court having cognisance of the question that the election was conducted in accordance with the principles laid down in the body of this Act.

Non-compliance with rules.

**73.** Every municipal election not called in question within twelve months after the election, either by election petition or by information in the nature of a quo warranto, shall be deemed to have been to all intents a good and valid election.

Election valid unless questioned within twelve months.

**74.—(1.)** If any person forges or fraudulently defaces or fraudulently destroys any nomination paper, or delivers to the town clerk any forged nomination paper, knowing it to be forged, he shall be guilty of a misdemeanour, and shall be liable to imprisonment for any term not exceeding six months, with or without hard labour.

Offences in relation to nomination papers.

(2.) An attempt to commit any such offence shall be punishable as the offence is punishable.

**75.—(1.)** If a mayor or revising assessor neglects or refuses to revise a parish burgess list, or a mayor or alderman neglects or refuses to conduct or declare an election, as required by this Act, he shall for every such offence be liable to a fine not exceeding one hundred pounds, recoverable by action.

Offences in relation to lists and elections.

(2.) If—

(a.) An overseer neglects or refuses to make, sign, or deliver a parish burgess list, as required by this Act ; or

(b.) A town clerk neglects or refuses to receive, print, and publish, a parish burgess list or list of claimants or respondents, as required by this Act ; or

(c.) An overseer or town clerk refuses to allow any such list to be inspected by a person having a right thereto ; he shall for every such neglect or refusal be liable to a fine not exceeding fifty pounds, recoverable by action.

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(3.) An action under this section shall not lie after three months from the neglect or refusal. A moiety of any fine recovered therein shall, after payment of the costs of action, be paid to the plaintiff.

## PART IV.

## CORRUPT PRACTICES AND ELECTION PETITIONS.

*Corrupt Practices.*

Definitions.

77. In this Part—

“Bribery,” “treating,” “undue influence,” and “personation,” include respectively anything done before, at, after, or with respect to a municipal election, which if done before, at, after, or with respect to a parliamentary election would make the person doing the same liable to any penalty, punishment, or disqualification for bribery, treating, undue influence, or personation, as the case may be, under any Act for the time being in force with respect to parliamentary elections:

“Candidate” means a person elected, or having been nominated, or having declared himself a candidate for election, to a corporate office:

“Voter” means a burgess or a person who votes or claims to vote at a municipal election:

“Election court” means a court constituted under this Part for the trial of an election petition:

“Municipal election petition” or “election petition” means a petition under this Part complaining of an undue municipal election:

31 & 32 Vict.  
c. 125.

“Parliamentary election petition” means a petition under the Parliamentary Elections Act, 1868:

“Prescribed” means prescribed by general rules made under this Part:

“Borough” and “election” when used with reference to a petition mean the borough and election to which the petition relates.

Avoidance of  
election for  
general  
corruption.

81. A municipal election shall be wholly avoided by such general corruption, bribery, treating, or intimidation at the election as would by the common law of Parliament avoid a parliamentary election.

Striking off  
votes.

85. The votes of persons in respect of whom any corrupt practice is proved to have been committed at a municipal election shall be struck off on a scrutiny.

Personation.

86. The enactments for the time being in force for the detection of personation and for the apprehension of persons charged with personation at a parliamentary election shall apply in the case of a municipal election.

*Election Petitions.*

**87.**—(1.) A municipal election may be questioned by an election petition on the ground—

(a.) That the election was as to the borough or ward wholly avoided by general bribery, treating, undue influence, or personation; or

(b.) That the election was avoided by corrupt practices or offences against this Part committed at the election; or

(c.) That the person whose election is questioned was at the time of the election disqualified; or

(d.) That he was not duly elected by a majority of lawful votes.

(2.) A municipal election shall not be questioned on any of those grounds except by an election petition.

**88.**—(1.) An election petition may be presented either by four or more persons who voted or had a right to vote at the election or by a person alleging himself to have been a candidate at the election.

(2.) Any person whose election is questioned by the petition, and any returning officer of whose conduct a petition complains, may be made a respondent to the petition.

(3.) The petition shall be in the prescribed form and shall be signed by the petitioner, and shall be presented in the prescribed manner to the High Court in the Queen's Bench Division, and the prescribed officer shall send a copy thereof to the town clerk, who shall forthwith publish it in the borough.

(4.) It shall be presented within twenty-one days after the day on which the election was held, except that if it complains of the election on the ground of corrupt practices, and specifically alleges that a payment of money or other reward has been made or promised since the election by a person elected at the election, or on his account or with his privity, in pursuance or furtherance of such corrupt practices, it may be presented at any time within twenty-eight days after the date of the alleged payment or promise, whether or not any other petition against that person has been previously presented or tried.

**89.**—(1.) At the time of presenting an election petition or within three days afterwards, the petitioner shall give security for all costs, charges, and expenses which may become payable by him to any witness summoned on his behalf, or to any respondent.

(2.) The security shall be to such amount, not exceeding five hundred pounds, as the High Court, or a Judge thereof, on summons, directs, and shall be given in the prescribed manner, either by a deposit of money, or by recognisance

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entered into by not more than four sureties, or partly in one way and partly in the other.

(3.) Within five days after the presentation of the petition the petitioner shall in the prescribed manner serve on the respondent a notice of the presentation of the petition, and of the nature of the proposed security, and a copy of the petition.

(4.) Within five days after service of the notice the respondent may object in writing to any recognisance on the ground that any surety is insufficient or is dead, or cannot be found or ascertained for want of a sufficient description in the recognisance, or that a person named in the recognisance has not duly acknowledged the same.

(5.) An objection to a recognisance shall be decided in the prescribed manner.

(6.) If the objection is allowed, the petitioner may, within a further prescribed time not exceeding five days, remove it by a deposit in the prescribed manner of such sum of money as will, in the opinion of the court or officer having cognisance of the matter, make the security sufficient.

(7.) If no security is given, as prescribed, or any objection is allowed and is not removed, as aforesaid, no further proceedings shall be had on the petition.

Petition at  
issue.

**90.** On the expiration of the time limited for making objections, or, after objection made, on the objection being disallowed or removed, whichever last happens, the petition shall be at issue.

Municipal  
election list.

**91.**—(1.) The prescribed officer shall as soon as may be make a list, in this Act referred to as the municipal election list, of all election petitions at issue, placing them in the order in which they were presented, and shall keep at his office a copy of this list, open to inspection in the prescribed manner.

(2.) The petitions shall, as far as conveniently may be, be tried in the order in which they stand in the list.

(3.) Two or more candidates may be made respondents to the same petition, and their cases may be tried at the same time, but for the purposes of this Part the petition shall be deemed to be a separate petition against each respondent.

(4.) Where more petitions than one are presented relating to the same election, or to elections held at the same time for different wards of the same borough, they shall be bracketed together in the list as one petition, but shall, unless the High Court otherwise directs, stand in the list in the place where the last of them would have stood if it had been the only petition relating to that election.

Constitution  
of election  
court.

**92.**—(1.) An election petition shall be tried by an election court consisting of a barrister qualified and appointed as in this section provided, without a jury.



(2.) A barrister shall not be qualified to constitute an election court if he is of less than fifteen years' standing, or is a member of the Commons House of Parliament, or holds any office or place of profit under the Crown, other than that of recorder.

(3.) A barrister shall not be qualified to constitute an election court for trial of an election petition relating to any borough for which he is recorder, or in which he resides, or which is included in a circuit of Her Majesty's judges on which he practises as a barrister.

(4.) As soon as may be after a municipal election list is made out the prescribed officer shall send a copy thereof to each of the judges for the time being on the rota for the trial of parliamentary election petitions. \* \* \*

(5.) If a commissioner to whom the trial of a petition is assigned, dies, or declines or becomes incapable to act, the said judges or two of them may assign the trial to be conducted or continued by any other of the commissioners appointed under this section.

(6.) The election court shall for the purposes of the trial have the same powers and privileges as a judge on the trial of a parliamentary election petition, except that any fine or order of committal by the court may on motion by the person aggrieved be discharged or varied by the High Court, or in vacation by a judge thereof, on such terms, if any, as the High Court or judge thinks fit.

**93.—(1.)** An election petition shall be tried in open court, and notice of the time and place of trial shall be given in the prescribed manner not less than seven days before the day of trial. Trial of election petition.

(2.) The place of trial shall be within the borough, except that the High Court may, on being satisfied that special circumstances exist rendering it desirable that the petition should be tried elsewhere, appoint some other convenient place for the trial.

(3.) The election court may in its discretion adjourn the trial from time to time, and from any one place to any other place within the borough or place where it is held.

(4.) At the conclusion of the trial the election court shall determine whether the person whose election is complained of, or any and what other person, was duly elected, or whether the election was void, and shall forthwith certify in writing the determination to the High Court, and the determination so certified shall be final to all intents as to the matters at issue on the petition.

(5.) Where a charge is made in a petition of any corrupt practice or offence against this Part having been committed at the election the court shall, in addition to the certificate, and at the same time, report in writing to the High Court as follows :



## APP. III.

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(a.) Whether any corrupt practice or offence against this Part has or has not been proved to have been committed by or with the knowledge and consent of any candidate at the election, and the nature of the corrupt practice or offence ;

(b.) The names of all persons (if any) proved at the trial to have been guilty of any corrupt practice or offence against this Part ;

(c.) Whether any corrupt practices have, or whether there is reason to believe that any corrupt practices have, extensively prevailed at the election in the borough or in any ward thereof.

(6.) The election court may at the same time make a special report to the High Court as to any matters arising in the course of the trial, an account of which ought, in the judgment of the election court, to be submitted to the High Court.

(7.) If, on the application of any party to a petition made in the prescribed manner to the High Court, it appears to the High Court that the case raised by the petition can be conveniently stated as a special case, the High Court may direct the same to be stated accordingly, and any such special case shall be heard before the High Court, and the decision of the High Court shall be final.

(8.) If it appears to the election court on the trial of a petition that any question of law as to the admissibility of evidence, or otherwise, requires further consideration by the High Court, the election court may postpone the granting of a certificate until the question has been determined by the High Court, and for this purpose may reserve any such question, as questions may be reserved by a judge on a trial at nisi prius.

(9.) On the trial of a petition, unless the election court otherwise directs, any charge of a corrupt practice or offence against this Part may be gone into, and evidence in relation thereto received before any proof has been given of agency on behalf of any candidate in respect of the corrupt practice or offence.

(10.) On the trial of a petition complaining of an undue election and claiming the office for some person, the respondent may give evidence to prove that that person was not duly elected, in the same manner as if he had presented a petition against the election of that person.

(11.) The trial of a petition shall be proceeded with notwithstanding that the respondent has ceased to hold the office his election to which is questioned by the petition.

(12.) A copy of any certificate or report made to the High Court on the trial of a petition, and, in the case of a decision by the High Court on a special case, a statement of the decision, shall be sent by the High Court to the Secretary of State.

(13.) A copy of any such certificate and a statement of any

such decision shall also be certified by the High Court, under the hands of two or more judges thereof, to the town clerk of the borough. APP. III.  
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**94.—**(1.) Witnesses at the trial of an election petition shall be summoned and sworn in the same manner, as nearly as circumstances admit, as witnesses at a trial at nisi prius, and shall be liable to the same penalties for perjury. Witnesses.

(2.) On the trial the election court may, by order in writing, require any person who appears to the court to have been concerned in the election to attend as a witness, and any person refusing to obey the order shall be guilty of contempt of court.

(3.) The court may examine any person so required to attend or being in court although he is not called and examined by any party to the petition.

(4.) A witness may, after his examination by the court, be cross-examined by or on behalf of the petitioner and respondent or either of them.

(5.) The reasonable expenses incurred by any person in appearing to give evidence at the trial of an election petition, according to the scale allowed to witnesses on the trial of civil actions at the assizes, may be allowed to him by a certificate of the election court or of the prescribed officer, and if the witness was called and examined by the court, shall be deemed part of the expenses of providing a court, but otherwise shall be deemed costs of the petition.

**95.—**(1.) A petitioner shall not withdraw an election petition without the leave of the election court or High Court on special application, made in the prescribed manner, and at the prescribed time and place. Withdrawal  
of petition.

(2.) The application shall not be made until the prescribed notice of the intention to make it has been given in the borough.

(3.) On the hearing of the application any person who might have been a petitioner in respect of the election may apply to the court to be substituted as a petitioner, and the court may, if it thinks fit, substitute him accordingly.

(4.) If the proposed withdrawal is in the opinion of the court induced by any corrupt bargain or consideration, the court may by order direct that the security given on behalf of the original petitioner shall remain as security for any costs that may be incurred by the substituted petitioner, and that to the extent of the sum named in the security, the original petitioner and his sureties shall be liable to pay the costs of the substituted petitioner.

(5.) If the court does not so direct, then security to the same amount as would be required in the case of a new petition, and subject to the like conditions, shall be given on behalf of the substituted petitioner before he proceeds with his petition

## APP. III.

and within the prescribed time after the order of substitution.

(6.) Subject as aforesaid, a substituted petitioner shall, as nearly as may be, stand in the same position and be subject to the same liabilities as the original petitioner.

(7.) If a petition is withdrawn, the petitioner shall be liable to pay the costs of the respondent.

(8.) Where there are more petitioners than one, an application to withdraw a petition shall not be made except with the consent of all the petitioners.

Abatement  
of petition.

**96.**—(1.) An election petition shall be abated by the death of a sole petitioner or of the survivor of several petitioners.

(2.) The abatement of a petition shall not affect the liability of the petitioner or of any other person to the payment of costs previously incurred.

(3.) On the abatement of a petition the prescribed notice thereof shall be given in the borough, and, within the prescribed time after the notice is given, any person who might have been a petitioner in respect of the election may apply to the election court or High Court in the prescribed manner and at the prescribed time and place to be substituted as a petitioner; and the court may, if it thinks fit, substitute him accordingly.

(4.) Security shall be given on behalf of a petitioner so substituted, as in the case of a new petition.

Withdrawal  
and substitution  
of  
respondents.

**97.**—(1.) If before the trial of an election petition a respondent other than a returning officer—

(a.) Dies, resigns, or otherwise ceases to hold the office to which the petition relates; or

(b.) Gives the prescribed notice that he does not intend to oppose the petition;

the prescribed notice thereof shall be given in the borough, and within the prescribed time after the notice is given any person who might have been a petitioner in respect of the election may apply to the election court or High Court to be admitted as a respondent to oppose the petition, and shall be admitted accordingly, except that the number of persons so admitted shall not exceed three.

(2.) A respondent who has given the prescribed notice that he does not intend to oppose the petition shall not be allowed to appear or act as a party against the petition in any proceedings thereon.

Costs on  
election  
petitions.

**98.**—(1.) All costs, charges, and expenses of and incidental to the presentation of an election petition, and the proceedings consequent thereon, except such as are by this Act otherwise provided for, shall be defrayed by the parties to the petition in such manner and proportions as the election court determines; and in particular any costs, charges, or expenses which in the opinion of the court have been caused by vexatious conduct,

unfounded allegations, or unfounded objections on the part either of the petitioner or of the respondent, and any needless expense incurred or caused on the part of petitioner or respondent, may be ordered to be defrayed by the parties by whom it has been incurred or caused, whether they are or not on the whole successful.

(2.) The costs may be taxed in the prescribed manner \* \* \* and may be recovered as the costs of such an action, or as otherwise prescribed.

(3.) If a petitioner neglects or refuses for three months after demand to pay to any person summoned as a witness on his behalf, or to the respondent, any sum certified to be due to him for his costs, charges, and expenses, and the neglect or refusal is, within one year after the demand, proved to the satisfaction of the High Court, every person who has under this Act entered into a recognizance relating to the petition shall be held to have made default in the recognizance, and the prescribed officer shall thereon certify the recognizance to be forfeited, and it shall be dealt with as a forfeited recognizance relating to a parliamentary election petition.

**99.**—(1.) The town clerk shall provide proper accommodation for holding the election court; and any expenses incurred by him for the purposes of this section shall be paid out of the borough fund or borough rate. Reception of  
and attend-  
ance on the  
election court.

(2.) All chief and head constables, superintendents of police, head-boroughs, gaolers, constables, and bailiffs shall give their assistance to the election court in the execution of its duties, and if any gaoler or officer of a prison makes default in receiving or detaining a prisoner committed thereto in pursuance of this Part, he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

(3.) The election court may employ officers and clerks as prescribed.

(4.) A shorthand writer shall attend at the trial of an election petition, and shall be sworn by the election court faithfully and truly to take down the evidence given at the trial. He shall take down the evidence at length. A transcript of the notes of the evidence taken by him shall, if the election court so directs, accompany the certificate of the election court. His expenses, according to a prescribed scale, shall be treated as part of the expenses incurred in receiving the court.

**100.**—(1.) The judges for the time being on the rota for the trial of parliamentary election petitions, may from time to time make, revoke, and alter General Rules for the effectual execution of this Part, and of the intention and object thereof, and the regulation of the practice, procedure, and costs of municipal election petitions, and the trial thereof, and the certifying and reporting thereon. Rules of pro-  
cedure and  
jurisdiction.

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(2.) All such rules shall be laid before both Houses of Parliament within three weeks after they are made, if Parliament is then sitting, and if not, within three weeks after the beginning of the then next session of Parliament, and shall, while in force, have effect as if enacted in this Act.

(3.) Subject to the provisions of this Act, and of the rules made under it, the principles, practice, and rules for the time being observed in the case of parliamentary election petitions, and in particular the principles and rules with regard to agency and evidence, and to a scrutiny, and to the declaring any person elected in the room of any other person declared to have been not duly elected, shall be observed, as far as may be, in the case of a municipal election petition.

(4.) The High Court shall, subject to this Act, have the same powers, jurisdiction, and authority with respect to a municipal election petition and the proceedings thereon as if the petition were an ordinary action within its jurisdiction.

(5.) The duties to be performed by the prescribed officer under this Part shall be performed by the prescribed officer of the High Court.

(6.) The general rules in force at the commencement of this Act with respect to matters within this Part shall, until superseded by rules made under this section, and subject to any amendment thereof by rules so made, have effect, with the necessary modifications, as if made under this section.

Expenses of  
election court.

**101.**—(1.) The remuneration and allowances to be paid to a commissioner for his services in respect of the trial of an election petition, and to any officers, clerks, or shorthand writers employed under this Part, shall be fixed by a scale made and varied by the election judges on the rota for the trial of parliamentary election petitions, with the approval of the Treasury. The remuneration and allowances shall be paid in the first instance by the Treasury, and shall be repaid to the Treasury, on their certificate, out of the borough fund or borough rate.

(2.) But the election court may in its discretion order that such remuneration and allowances, or the expenses incurred by a town clerk for receiving the election court, shall be repaid, wholly or in part, to the Treasury or the town clerk, as the case may be, in the cases, by the persons, and in the manner following (namely):

(a.) When in the opinion of the election court a petition is frivolous and vexatious, by the petitioner;

(b.) When in the opinion of the election court a respondent has been personally guilty of corrupt practices at the election, by that respondent.

(3.) An order so made for the repayment of any sum by a petitioner or respondent may be enforced as an order for payment of costs; but a deposit made or security given under



this Part shall not be applied for any such repayment until all costs and expenses payable by the petitioner or respondent to any party to the petition have been satisfied. APP. III.  
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**102.** Where a candidate who has been elected to a corporate office is, by a certificate of an election court or a decision of the High Court, declared not to have been duly elected, acts done by him in execution of the office, before the time when the certificate or decision is certified to the town clerk, shall not be invalidated by reason of that declaration. Acts done pending a petition not invalidated.

**103.** Where on an election petition the election of any person to a corporate office has been declared void, and no other person has been declared elected in his room, a new election shall be held to supply the vacancy in the same manner as on a casual vacancy; and for the purposes of the election any duties to be performed by a mayor, alderman, or other officer, shall, if he has been declared not elected, be performed by a deputy, or other person who might have acted for him if he had been incapacitated by illness. Provisions as to elections in the room of persons unseated on petition.

**104.** A person who has voted at a municipal election by ballot shall not in any proceeding to question the election be required to state for whom he has voted. Prohibition of disclosure of vote.

## PART V.

### CORPORATE PROPERTY AND LIABILITIES.

#### *Misapplication of Corporate Property.*

**124.—(1.)** It shall not be lawful for a municipal corporation, or the council of a borough, or a corporate officer, or a trustee, or other person acting for a municipal corporation, to pay or apply any money, stocks, funds, securities, or personal property, of or held in trust for the corporation, in payment of any expenses occasioned by a parliamentary election or incurred by any person offering himself as a candidate at or before a parliamentary election. Prohibition of expenditure of corporate funds on parliamentary elections.

(2.) Any bond, covenant, recognizance, or judgment given by a corporation, council, officer, trustee, or person as aforesaid, for securing payment of such expenses, shall be void.

(3.) Any payment, application, bond, covenant, recognizance, or judgment made or given by a corporation, council, officer, trustee, or person as aforesaid, for inducing any person to labour in a parliamentary election at a future time, or to pay or incur expenses as aforesaid at a future time, shall be deemed to be forbidden and declared void by this section, although colourably made or given for any other cause or consideration.



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(4.) Any mortgage or other disposition of corporate land for securing or satisfying any expenses or engagements incurred or to be incurred as aforesaid, and any estate or charge thereby created, shall be void.

(5.) Any resolution, bye-law, or other proceeding of a council, purporting to direct or authorize any payment or thing forbidden by this section, or made or adopted for evading the provisions thereof, shall be void.

(6.) If any member of a municipal corporation authorizes or directs any payment or application forbidden by this section, or assents to, or concurs or participates in, any affirmative vote or proceeding relating thereto, or signs or seals in his individual capacity, or affixes the corporate seal to, any instrument by this section declared void, he shall be guilty of a misdemeanour, and, on conviction thereof in the High Court, shall, in addition to such punishment as the court awards, be for ever disabled to take, hold, or exercise any office in the same corporation.

(7.) If any corporate officer, trustee, or other person as aforesaid, makes, or concurs in making, any payment or application of money or property as aforesaid, he shall be deemed to have done so in his own wrong, and he shall be individually liable to repay and make good the amount or value thereof to the corporation, notwithstanding any release or pretended indemnity given to him in the name or on behalf of the corporation.

(8.) Any two or more burgesses may bring and prosecute any action in the name of the corporation against any officer, trustee, or person making any illegal payment or application as aforesaid, as if they, their executors and administrators, were jointly and severally appointed the irrevocable attorneys of the corporation for that purpose; but the plaintiffs shall, on the application of the defendant, give reasonable security, as the court directs, for costs, as between solicitor and client.

(9.) Nothing in this section shall affect the provisions of the Ballot Act, 1872, or of any other Act for the time being in force regulating the payment by the returning officer or otherwise of expenses relating to parliamentary elections.

## PART XII.

### LEGAL PROCEEDINGS.

Prosecution of  
offences and  
recovery of  
fines.

**219.**—(1.) In summary proceedings for offences and fines under this Act the information shall be laid within six months after the commission of the offence.

(2.) Any person aggrieved by a conviction of a court of

summary jurisdiction under this Act may appeal therefrom to a court of quarter sessions. APP. III.

(3.) Any fine incurred under this Act and not recoverable summarily may be recovered by action in the High Court.

**220.** A conviction, order, warrant, or other matter made or done or purporting to be made or done by virtue of this Act shall not be quashed for want of form, and shall not, unless it is an order of the council for payment of money out of the borough fund, be removed by certiorari or otherwise into the High Court. Exclusion of certiorari.

**221.**—(1.) Where by any Act passed or to be passed, any fine, penalty or forfeiture is made recoverable in a summary manner before any justice or justices and payable to the Crown or to any body corporate, or to any person whomsoever, the same if recovered and adjudged before any justice of a borough having a separate court of quarter sessions shall, notwithstanding anything in the Act under which it is recovered, be recovered for and adjudged to be paid to the treasurer of the borough. Application of penalties in quarter sessions boroughs.

(2.) But this section shall not apply to a fine, penalty, or forfeiture, or part thereof, where the Act under which it is recovered—

- (a.) Directs payment thereof to the informer or to any person aggrieved; or
- (b.) If passed since the Municipal Corporations Act, 1835, directs that the same shall go in any other manner and not to the borough fund; or
- (c.) Relates to the customs, excise, or post office, or to trade or navigation, or to any branch of the revenue of the Crown.

**222.** Where the offices of town clerk and clerk of the peace for a borough are not held by the same person, the clerk of the peace shall perform all duties imposed on the town clerk by the Act of the third year of King George the Fourth, chapter forty-six, “for the more speedy return and levying of fines, penalties, and forfeitures, and recognizances estreated;” and the clerk of the peace shall make all returns, issue all processes, and do all other acts required by that Act to be made, issued, and done by the town clerk. Duties of clerk of peace as to fines and forfeitures.

**223.** Any summons for appearance, warrant to enforce appearance, warrant for apprehension, or search warrant, may, if issued by a justice for a borough, be served or executed in any county wherein the borough or any part thereof is situate, or within any distance not exceeding seven miles from the borough, and, within those limits, shall have the same effect as if it had been issued or indorsed by a justice having jurisdiction in the place where it is served or executed, and may be served or executed by the constable or special constable to whom it is directed. Service of summons or warrant.

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Procedure in  
penal actions  
against  
corporate  
officers.

**224.**—(1.) An action to recover a fine from any person for acting in a corporate office without having made the requisite declaration, or without being qualified, or after ceasing to be qualified, or after becoming disqualified, may not be brought except by a burgess of the borough, and shall not lie unless the plaintiff has, within fourteen days after the cause of action arose, served a notice in writing personally on the person liable to the fine of his intention to bring the action, nor unless the action is commenced within three months after the cause of action arose.

(2.) The court or a judge shall, on the application of the defendant within fourteen days after he has been served with writ of summons in the action, require the plaintiff to give security for costs.

(3.) Unless judgment is given for the plaintiff, the defendant shall be entitled to costs, to be taxed as between solicitor and client.

(4.) Where any such action is brought against a person on the ground of his not being qualified in respect of estate, it shall lie on him to prove that he was so qualified.

(5.) A moiety of the fine recovered shall, after payment of the costs of action, be paid to the plaintiff.

Quo war-  
ranto and  
mandamus.

**225.**—(1.) An application for an information in the nature of a quo warranto against any person claiming to hold a corporate office shall not be made after the expiration of twelve months from the time when he became disqualified after election.

(2.) In the case of such an application, or of an application for a mandamus to proceed to an election of a corporate officer, the applicant shall give notice in writing of the application to the person to be affected thereby (in this section called the respondent) at any time not less than ten days before the day in the notice specified for making the application.

(3.) The notice shall set forth the name and description of the applicant, and a statement of the grounds of the application.

(4.) The applicant shall deliver with the notice a copy of the affidavits whereby the application will be supported.

(5.) The respondent may show cause in the first instance against the application.

(6.) If sufficient cause is not shown, the court, on proof of due service of the notice, statement, and copy of affidavits, used in support of the application, may, if it thinks fit, make the rule for the information or mandamus absolute.

(7.) The court may, if it thinks fit, direct that any issue of fact on an information be tried by jury in London or at Westminster.

(8.) The court may, if it thinks fit, direct that any writ of mandamus issued shall be peremptory in the first instance.

**226.**—(1.) An action, prosecution, or proceeding against any person for any act done in pursuance or execution or intended execution of this Act, or in respect of any alleged neglect or default in the execution of this Act, shall not lie or be instituted unless it is commenced within six months next after the act or thing is done or omitted, or, in case of a continuance of injury or damage, within six months next after the ceasing thereof.

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Provisions for  
protection of  
persons acting  
under Act.

(2.) Where the action is for damages, tender of amends before the action was commenced may, in lieu of or in addition to any other plea, be pleaded. If the action was commenced after the tender, or is proceeded with after payment into court of any money in satisfaction of the plaintiff's claim, and the plaintiff does not recover more than the sum tendered or paid, he shall not recover any costs incurred after the tender or payment, and the defendant shall be entitled to costs, to be taxed as between solicitor and client, as from the time of the tender or payment; but this provision shall not affect costs on any injunction in the action.

(3.) Subject and without prejudice to any other powers, the council, where the defendant in any such action, prosecution, or other proceeding is their officer, agent, or servant, may, if they think fit, except so far as the court before which the action, prosecution, or other proceeding is heard and determined otherwise directs, pay out of the borough fund or borough rate all or any part of any sums payable by the defendant in or in consequence of the action, prosecution, or proceeding, whether in respect of costs, charges, expenses, damages, fine, or otherwise.

### *Time.*

**230.**—(1.) Where by this Act any limited time from or after any date or event is appointed or allowed for the doing of any act or the taking of any proceeding, then in the computation of that limited time the same shall be taken as exclusive of the day of that date or of the happening of that event, and as commencing at the beginning of the next following day; and the act or proceeding shall be done or taken at the latest on the last day of the limited time as so computed, unless the last day is a Sunday, Christmas-day, Good Friday, or Monday or Tuesday in Easter week, or a day appointed for public fast, humiliation, or thanksgiving, in which case any act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being one of the days in this section specified.

(2.) Where by this Act any act or proceeding is directed or allowed to be done or taken on a certain day, then if that day happens to be one of the days in this section specified, the act

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or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being one of the days in this section specified.

(3.) Where by this Act any act or proceeding is directed or allowed to be done or taken within any time not exceeding seven days, the days in this section specified shall not be reckoned in the computation of such time.

*Distance.*

Measurement  
of distances.

**231.** The distances mentioned in this Act shall be measured in a straight line on a horizontal plane, and may be determined by the map made under the survey commonly known as the Ordnance Survey.

*Notices.*

Notices on  
town hall.

**232.** Any notice or other document required by this Act to be fixed on the town hall shall be fixed in some conspicuous place on or near the outer door of the town hall, or, if there is no town hall, in some conspicuous place in the borough or ward to which the notice or document relates.

*Deputy.*

Acts of deputy  
not to be in-  
validated by  
defect in ap-  
pointment.

**237.** No defect in the appointment of a deputy under this Act shall invalidate his acts.

*Declarations and Oaths.*

Power to ad-  
minister  
oaths, &c.

**239.**—(1.) Where by or under this Act a declaration or oath is required to be made or taken by the holder of a corporate office or other person before the council or any members thereof, or any other persons, they shall have authority to receive and administer the same without any commission or authority other than this Act.

(2.) Nothing in this Act in any case shall require or authorise the taking or making of any oath or declaration that would not have been required or authorised under the Promissory Oaths Act, 1868, or otherwise by law, if this Act had not been passed, or interfere with the operation of the Promissory Oaths Act, 1868.

31 & 32 Vict.  
c. 72.

*Forms.*

Forms in  
schedule.

**240.** The forms in the Eighth Schedule or forms to the like effect, varied as circumstances require, may be used, and shall be sufficient in law.



*Misnomer or Inaccurate Description.*

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**241.** No misnomer or inaccurate description of any person, body corporate, or place named in any schedule to the Municipal Corporations Act, 1835, or in any roll, list, notice, or voting paper required by this Act, shall hinder the full operation of this Act with respect to that person, body corporate, or place, provided the description of that person, body corporate, or place be such as to be commonly understood.

Misnomer or  
inaccurate  
description  
not to hinder.

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THE SECOND SCHEDULE.

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MEETINGS AND PROCEEDINGS OF COUNCIL.

1. The council shall hold four quartely meetings in every year for the transaction of general business.

2. The quarterly meetings shall be held at noon on each ninth of November. and at such hour on such other three days before the first of November then next following as the council at the quarterly meeting in November decide or afterwards from time to time by standing order determine.

3. The mayor may at any time call a meeting of the council.

4. If the mayor refuses to call a meeting after a requisition for that purpose, signed by five members of the council, has been presented to him, any five members of the council may forthwith, on that refusal, call a meeting. If the mayor (without so refusing) does not within seven days after such presentation call a meeting, any five members of the council may, on the expiration of those seven days, call a meeting.

5. Three clear days at least before any meeting of the council, notice of the time and place of the intended meeting, signed by the mayor, or if the meeting is called by members of the council, by those members, shall be fixed on the town hall. Where the meeting is called by members of the council, the notice shall specify the business proposed to be transacted thereat.

6. Three clear days at least before any meeting of the council, a summons to attend the meeting, specifying the business proposed to be transacted thereat, and signed by the town clerk, shall be left or delivered by post in a registered letter at the usual place of abode of every member of the council, three clear days at least before the meeting.

7. Want of service of the summons on any member of the council shall not affect the validity of the meeting.



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8. No business shall be transacted at a meeting other than that specified in the summons relating thereto, except in case of a quarterly meeting, business prescribed by this Act to be transacted thereat.

9. At every meeting of the council, the mayor, if present, shall be chairman. If the mayor is absent, then the deputy mayor, if chosen for that purpose by the members of the council then present, shall be chairman. If both the mayor and the deputy mayor are absent, or the deputy mayor, being present, is not chosen, then such alderman, or in the absence of all the aldermen, such councillor, as the members of the council then present choose, shall be chairman.

10. All acts of the council, and all questions coming or arising before the council, may be done and decided by the majority of such members of the council as are present and vote at a meeting held in pursuance of this Act, the whole number present at the meeting, whether voting or not, not being less than one-third of the number of the whole council.

11. In case of equality of votes, the chairman of the meeting shall have a second or casting vote.

12. Minutes of the proceedings of every meeting shall be drawn up and fairly entered in a book kept for that purpose, and shall be signed in manner authorized by this Act.

13. Subject to the foregoing provisions of this Schedule, the council may from time to time make standing orders for the regulation of their proceedings and business, and vary or revoke the same.

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## THE THIRD SCHEDULE.

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### ELECTIONS.

#### PART II.

#### *Rules as to Nomination in Elections of Councillors.*

1. Every candidate for the office of councillor must be nominated in writing.

2. The writing must be subscribed by two burgesses of the borough or, in the case of a ward election, of the ward, as proposer and seconder, and by eight other burgesses of the borough or ward, as assenting to the nomination.

3. Each candidate must be nominated by a separate nomination paper, but the same burgesses, or any of them, may subscribe as many nomination papers as there are vacancies to be filled, but no more.

4. Each person nominated must be enrolled in the burgess roll or entered in the separate non-resident list required by this Act to be made.

5. The nomination paper must state the surname and other names of the candidate, with his abode and description.

6. The town clerk shall provide nomination papers, and shall supply any burgess with as many nomination papers as may be required, and shall, at the request of any burgess, fill up a nomination paper.

7. Every nomination paper subscribed as aforesaid must be delivered by the candidate, or his proposer or seconder, at the town clerk's office, seven days at least before the day of election, and before five o'clock in the afternoon of the last day for delivery of nomination papers.

8. The town clerk shall forthwith send notice of every such nomination to each candidate.

9. The mayor shall attend at the town hall on the day next after the last day for delivery of nomination papers for a sufficient time, between the hours of two and four in the afternoon, and shall decide on the validity of every objection made in writing to a nomination paper.

10. Where a person subscribes more nomination papers than one, his subscription shall be inoperative in all but the one which is first delivered.

11. Each candidate may, by writing signed by him, or, if he is absent from the United Kingdom, then his proposer or seconder may, by writing signed by him, appoint a person (in this schedule referred to as the candidate's representative) to attend the proceedings before the mayor on behalf of the candidate, and this appointment must be delivered to the town clerk before five o'clock in the afternoon of the last day for delivery of nomination papers.

12. Each candidate and his representative, but no other person, except for the purpose of assisting the mayor, shall be entitled to attend the proceedings before the mayor.

13. Each candidate and his representative may, during the time appointed for the attendance of the mayor for the purposes of this schedule, object to the nomination paper of any other candidate for the borough or ward.

14. The decision of the mayor shall be given in writing, and shall, if disallowing an objection, be final, but, if allowing an objection, shall be subject to reversal on petition questioning the election or return.

15. The town clerk shall at least four days before the day of election cause the surnames and other names of all persons validly nominated, with their respective abodes and descriptions, and the names of the persons subscribing their nomination papers as proposers and seconders, to be printed and fixed on

APP. III.

the town hall, and in the case of a ward election, in some conspicuous place in the ward.

16. The nomination of a person absent from the United Kingdom shall be void, unless his written consent given within one month before the day of his nomination in the presence of two witnesses is produced at the time of his nomination.

17. Where the number of valid nominations exceeds that of the vacancies, any candidate may withdraw from his candidature by notice signed by him, and delivered at the town clerk's office not later than two o'clock in the afternoon of the day next after the last day for delivery of nomination papers: Provided that such notices shall take effect in the order in which they are delivered, and that no such notice shall have effect so as to reduce the number of candidates ultimately standing nominated below the number of vacancies.

18. In and for the purpose of the provisions of this Act relating to proceedings preliminary to election, the burgess roll or ward roll which will be in force on the day of election shall be deemed to be the burgess roll or ward roll, and a person whose name is inserted in one of the lists from which the burgess roll or ward roll will be made up, shall be deemed to be enrolled in that roll although that roll is not yet completed.

### PART III.

#### *Modifications of the Ballot Act in its application to Municipal Elections.*

1. The provisions of the Ballot Act, 1872, with respect to the voting of a returning officer, the use of a room for taking a poll, and the right to vote of persons whose names are on the register of voters, and Rules 16 and 19 in the schedule to that Act, shall not apply in the case of a municipal election.

2. The mayor shall at least four days before the day of election give public notice of the situation, division, and allotment of polling places for taking the poll at the election, and of the description of the persons entitled to vote thereat, and at the several polling stations.

3. The mayor shall provide everything which in the case of a parliamentary election is required to be provided by the returning officer for the purpose of a poll, and shall appoint officers for taking the poll and counting the votes.

4. The mayor shall furnish every polling station with such number of compartments in which the voters can mark their votes screened from observation and furnish each presiding officer with such number of ballot papers, as in the judgment of the mayor may be necessary for effectually taking the poll at the election.

5. All expenses of the election shall be defrayed in manner by this Act provided. APP. III.

6. No return shall be made to the clerk of the Crown in Chancery.

46 & 47 VICT. c. 51.

*An Act for the better prevention of Corrupt and Illegal Practices at Parliamentary Elections.*

[25th August 1883.]

*Miscellaneous.*

45. Where information is given to the Director of public prosecutions that any corrupt or illegal practices have prevailed in reference to any election, it shall be his duty, subject to the regulations under the Prosecution of Offences Act, 1879, to make such inquiries and institute such prosecutions as the circumstances of the case appear to him to require. Inquiry by Director of public prosecutions into alleged corrupt or illegal practices.

46. Where a person has, either before or after the commencement of this Act, become subject to any incapacity under the Corrupt Practices Prevention Acts or this Act by reason of a conviction or of a report of any election court or election commissioners, and any witness who gave evidence against such incapacitated person upon the proceeding for such conviction or report is convicted of perjury in respect of that evidence, the incapacitated person may apply to the High Court, and the Court, if satisfied that the conviction or report so far as respects such person was based upon perjury, may order that such incapacity shall thenceforth cease, and the same shall cease accordingly. Removal of incapacity on proof that it was procured by perjury.

*Legal Proceedings.*

51.—(1.) A proceeding against a person in respect of the offence of a corrupt or illegal practice or any other offence under the Corrupt Practices Prevention Acts or this Act shall be commenced within one year after the offence was committed, or if it was committed in reference to an election with respect to which an inquiry is held by election commissioners shall be commenced within one year after the offence was committed, or within three months after the report of such commissioners is made, whichever period last expires, so that it be commenced within two years after the offence was committed, and the time so limited by this section shall, in the case of any proceeding under the Summary Jurisdiction Acts for any such offence, whether before an election court or otherwise, be substituted for any limitation of time contained in the last-mentioned Acts. Limitation of time for prosecution of offence.

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(2.) For the purposes of this section the issue of a summons, warrant, writ, or other process shall be deemed to be a commencement of a proceeding, where the service or execution of the same on or against the alleged offender is prevented by the absconding or concealment or act of the alleged offender, but save as aforesaid the service or execution of the same on or against the alleged offender, and not the issue thereof, shall be deemed to be the commencement of the proceeding.

*Supplemental Provisions, Definitions, Savings, and Repeal.*

Obligation of witness to answer, and certificate of indemnity.

**59.**—(1.) A person who is called as a witness respecting an election before any election court shall not be excused from answering any question relating to any offence at or connected with such election, on the ground that the answer thereto may criminate or tend to criminate himself or on the ground of privilege ;

Provided that—

(a.) a witness who answers truly all questions which he is required by the election court to answer shall be entitled to receive a certificate of indemnity under the hand of a member of the court stating that such witness has so answered : and

(b.) an answer by a person to a question put by or before any election court shall not, except in the case of any criminal proceeding for perjury in respect of such evidence, be in any proceeding, civil or criminal, admissible in evidence against him :

(2.) Where a person has received such a certificate of indemnity in relation to an election, and any legal proceeding is at any time instituted against him for any offence under the Corrupt Practices Prevention Acts or this Act committed by him previously to the date of the certificate at or in relation to the said election, the court having cognizance of the case shall on proof of the certificate stay the proceeding, and may in their discretion award to the said person such costs as he may have been put to in the proceeding.

(3.) Nothing in this section shall be taken to relieve a person receiving a certificate of indemnity from any incapacity under this Act or from any proceeding to enforce such incapacity (other than a criminal prosecution).

(4.) This section shall apply in the case of a witness before any election commissioners, in like manner as if the expression "election court" in this section included election commissioners.

(5.) Where a solicitor or person lawfully acting as agent for any party to an election petition respecting any election for a county or borough has not taken any part or been concerned in such election, the election commissioners inquiring into



such election shall not be entitled to examine such solicitor or agent respecting matters which came to his knowledge by reason only of his being concerned as solicitor or agent for a party to such petition. APP. III.  
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**60.** An election court or election commissioners, when reporting that certain persons have been guilty of any corrupt or illegal practice, shall report whether those persons have or not been furnished with certificates of indemnity; and such report shall be laid before the Attorney-General (accompanied in the case of the commissioners with the evidence on which such report was based) with a view to his instituting or directing a prosecution against such persons as have not received certificates of indemnity, if the evidence should, in his opinion, be sufficient to support a prosecution. Submission of report of election court or commissioners to Attorney-General.

**64.** In this Act, unless the context otherwise requires—  
The expression “High Court” means Her Majesty’s High Court of Justice in England: General interpretation of terms.

The expressions “court of summary jurisdiction,” “petty sessional court,” and “Summary Jurisdictions Acts” have the same meaning as in the Summary Jurisdiction Act, 1879: 42 & 43 Vict. c. 49.

The expression “the Attorney-General” includes the Solicitor-General in cases where the office of the Attorney-General is vacant or the Attorney-General is interested or otherwise unable to act:

The expression “elector” means any person whose name is for the time being on the register roll or book containing the names of the persons entitled to vote at the election with reference to which the expression is used:

The expression “register of electors” means the said register roll or book:

The expression “polling agent” means an agent of the candidate appointed to attend at a polling station in pursuance of the Ballot Act, 1872, or of the Acts therein referred to or amending the same: 35 & 36 Vict. c. 33.

The expression “person” includes an association or body of persons, corporate or unincorporate, and where any act is done by any such association or body, the members of such association or body who have taken part in the commission of such act shall be liable to any fine or punishment imposed for the same by this Act:

The expression “committee room” shall not include any house or room occupied by a candidate at an election as a dwelling, by reason only of the candidate there transacting business with his agents in relation to such election; nor shall any room or building be deemed to be a committee room for the purposes of this Act by reason only of the candidate or any agent of the candidate addressing therein electors, committee-men or others:



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The expression "public office" means any office under the Crown or under the charter of a city or municipal borough or under the Acts relating to Municipal Corporations or to the Poor Law, or under the Elementary Education Act, 1870, or under the Public Health Act, 1875, or under any Acts amending the above-mentioned Acts, or under any other Acts for the time being in force (whether passed before or after the commencement of this Act) relating to local government, whether the office is that of mayor, chairman, alderman, councillor, guardian, member of a board, commission, or other local authority in any county, city, borough, union, sanitary district, or other area, or is the office of clerk of the peace, town clerk, clerk or other officer under a council, board, commission, or other authority, or is any other office, to which a person is elected or appointed under any such charter or Act as above-mentioned, and includes any other municipal or parochial office; and the expressions "election," "election petition," "election court," and "register of electors," shall, where expressed to refer to an election for any such public office, be construed accordingly:

The expression "judicial office" includes the office of justice of the peace and revising barrister:

The expression "indictment" includes information:

The expression "costs" includes costs, charges, and expenses:

The expression "payment" includes any pecuniary or other reward; and the expressions "pecuniary reward" and "money" shall be deemed to include any office, place, or employment, and any valuable security, or other equivalent for money, and any valuable consideration, and expressions referring to money shall be construed accordingly:

The expression "Licensing Acts" means the Licensing Acts, 1872 to 1874:

Other expressions have the same meaning as in the Corrupt Practices Prevention Acts.

## MUNICIPAL ELECTIONS (CORRUPT AND ILLEGAL PRACTICES) ACT, 1884.

[47 & 48 VICT. c. 70.]

*An Act for the better Prevention of Corrupt and Illegal Practices at Municipal and other Elections.*

[14th August 1884.]

Short title.

1. This Act may be cited as the Municipal Elections (Corrupt and Illegal Practices) Act, 1884.

*Corrupt Practices.*

2. (1.) The expression "corrupt practice" in this Act means any of the following offences, namely, treating, undue influence, bribery, and personation as defined by the enactments set forth in Part One of the Third Schedule to this Act, and aiding, abetting, counselling, and procuring the commission of the offence of personation.

Definition and punishment of corrupt practice at municipal election.

(2.) A person who commits any corrupt practice in reference to a municipal election shall be guilty of the like offence, and shall on conviction be liable to the like punishment, and subject to the like incapacities, as if the corrupt practice had been committed in reference to a parliamentary election.

3. (1.) Where upon the trial of an election petition respecting a municipal election for a borough or ward of a borough it is found by the report of an election court made in pursuance of section ninety-three of the Municipal Corporations Act, 1882, that any corrupt practice, other than treating and undue influence, has been proved to have been committed in reference to such election by or with the knowledge and consent of any candidate at such election, or that the offence of treating or undue influence has been proved to have been committed in reference to such election by any candidate at such election, that candidate shall not be capable of ever holding a corporate office in the said borough, and if he has been elected his election shall be void; and he shall further be subject to the same incapacities as if at the date of the said report he had been convicted of a corrupt practice.

Incapacity of candidate reported guilty of corrupt practice. 45 & 46 Vict. c. 50.

(2.) Upon the trial of an election petition respecting a municipal election for a borough or ward of a borough in which a charge is made of any corrupt practice having been committed in reference to such election, the election court shall report in writing to the High Court whether any of the candidates at such election has been guilty by his agents of any corrupt practice in reference to such election, and if the report is that any candidate at such election has been guilty by his agents of a corrupt practice in reference to such election, that candidate shall not be capable of being elected to or holding any corporate office in the said borough, during a period of three years from the date of the report, and if he has been elected, his election shall be void.

*Illegal Practices.*

4. (1.) No payment or contract for payment shall, for the purpose of promoting or procuring the election of a candidate at a municipal election, be made—

Certain expenditure to be illegal practice.

(a.) on account of the conveyance of electors to or from the

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poll whether for the hiring of horses or carriages, or for railway fares, or otherwise ; or

- (b.) to an elector on account of the use of any house, land, building, or premises for the exhibition of any address, bill, or notice, or on account of the exhibition of any address, bill, or notice ; or
- (c.) on account of any committee room in excess of the number allowed by this Act (that is to say), if the election is for a borough one committee room for the borough, and if the election is for a ward one committee room for the ward, and if the number of electors in such borough or ward exceeds two thousand, one additional committee room for every two thousand electors and incomplete part of two thousand electors, over and above the said two thousand.

(2.) Subject to such exception as may be allowed in pursuance of this Act, if any payment or contract for payment is knowingly made in contravention of this section either before, during, or after a municipal election, the person making such payment or contract shall be guilty of an illegal practice, and any person receiving such payment or being a party to any such contract, knowing the same to be in contravention of this Act, shall also be guilty of an illegal practice.

(3.) Provided that where it is the ordinary business of an elector as an advertising agent to exhibit for payment bills and advertisements, a payment to or contract with such elector if made in the ordinary course of business, shall not be deemed to be an illegal practice within the meaning of this section.

5. (1.) Subject to such exception as may be allowed in pursuance of this Act, no sum shall be paid and no expense shall be incurred by or on behalf of a candidate at an election, whether before, during, or after an election, on account of or in respect of the conduct or management of such election, save that in the case of an election of a councillor a sum may be paid and expense incurred not in excess of the maximum amount following ; (that is to say,)

Expense in  
excess of  
maximum to  
be illegal  
practice.

The sum of twenty-five pounds, and, if the number of electors in the borough or ward exceeds five hundred, an additional amount of threepence for each elector above the first five hundred electors.

(2.) Any candidate or agent of a candidate or person who knowingly acts in contravention of this section shall be guilty of an illegal practice.

(3.) Where there are two or more joint candidates at an election the maximum amount of expenses shall, for each of such joint candidates, be reduced by one fourth, or if there are more than two joint candidates by one third.

(4.) Where two or more candidates at the election, by them-

selves or any agent or agents, hire or use the same committee rooms for such election, or employ or use the services of the same clerks, messengers, or polling agent at such election, or publish a joint address or joint circular or notice at such election, those candidates shall be deemed for the purposes of this enactment to be joint candidates at such election: Provided that—

(a.) The employment and use of the same committee room, clerk, messenger, or polling agent, if accidental or casual, or of a trivial and unimportant character, shall not be deemed of itself to constitute persons joint candidates:

(b.) Nothing in this enactment shall prevent candidates from ceasing to be joint candidates:

(c.) Where any excess of expenses above the maximum allowed for one of two or more joint candidates has arisen owing to his having ceased to be a joint candidate, or to his having become a joint candidate after having begun to conduct his election as a separate candidate, and such ceasing or beginning was in good faith, and such excess is not more than under the circumstances is reasonable, and the total expenses of such candidate do not exceed the maximum amount allowed for a separate candidate, such excess shall be deemed to have arisen from a reasonable cause within the meaning of the enactments respecting the allowance by the High Court or election court of an exception from the provisions of this Act which would otherwise make an act an illegal practice, and the candidate may be relieved accordingly from the consequences of having incurred such excess of expenses.

6. (1.) If any person votes or induces or procures any person to vote at a municipal election, knowing that he or such person is prohibited, whether by this or any other Act, from voting at such election, he shall be guilty of an illegal practice. Voting by prohibited persons and publishing of false statements of withdrawal to be illegal.

(2.) Any person who before or during a municipal election knowingly publishes a false statement of the withdrawal of a candidate at such election for the purpose of promoting or procuring the election of another candidate shall be guilty of an illegal practice.

(3.) Provided that a candidate shall not be liable, nor shall his election be avoided, for any illegal practice under this section committed without his knowledge and consent.

7. A person guilty of an illegal practice in reference to a municipal election, shall on summary conviction be liable to a fine not exceeding one hundred pounds and be incapable during a period of five years from the date of his conviction of Punishment on conviction of illegal practice.

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being registered as an elector or voting at any election (whether it be a parliamentary election or an election for a public office within the meaning of this Act) held for or within the borough in which the illegal practice has been committed.

Incapacity of  
candidate  
reported  
guilty of  
illegal prac-  
tice.

45 & 46 Vict.  
c. 50.

8. (1.) An illegal practice within the meaning of this Act shall be deemed to be an offence against Part Four of the Municipal Corporations Act, 1882, and a petition alleging such illegal practice may be presented and tried accordingly.

(2.) Upon the trial of an election petition respecting a municipal election for a borough or ward of a borough in which a charge is made of any illegal practice having been committed in reference to such election, the election court shall report in writing to the High Court whether any of the candidates at such election has been guilty by himself or his agents of an illegal practice in reference to such election, and if the report is that a candidate at such election has been guilty by himself or his agents of an illegal practice in reference to such election, the candidate shall not be capable of being elected to or of holding any corporate office in the said borough during the period for which he was elected to serve, or for which if elected he might have served, and if he was elected, his election shall be void; and, if the report is that such candidate has himself been guilty of such illegal practice, he shall also be subject to the same incapacities as if at the date of the report he had been convicted of such illegal practice.

*Illegal Payment, Employment, and Hiring.*

Providing  
of money  
for illegal  
practice or  
payment to  
be illegal  
payment.

9. Where a person knowingly provides money for any payment which is contrary to the provisions of this Act, or for any expenses incurred in excess of any maximum amount allowed by this Act, or for replacing any money expended in any such payment, except where the same may have been previously allowed in pursuance of this Act to be an exception, such person shall be guilty of illegal payment.

Employment  
of hackney  
carriages, or  
of carriages  
and horses  
kept for hire.

10. (1.) A person shall not let, lend, or employ for the purpose of the conveyance of electors to or from the poll at a municipal election, any public stage or hackney carriage, or any horse or other animal kept or used for drawing the same, or any carriage, horse, or other animal which he keeps or uses for the purpose of letting out for hire, and if he lets, lends, or employs such carriage, horse, or other animal, knowing that it is intended to be used for the purpose of the conveyance of electors to or from the poll, he shall be guilty of illegal hiring.

(2.) A person shall not hire, borrow, or use for the purpose of the conveyance of electors to or from the poll any carriage, horse, or other animal which he knows the owner thereof is prohibited by this section to let, lend, or employ for that purpose, and if he does so he shall be guilty of illegal hiring. 1



(3.) Nothing in this Act shall prevent a carriage, horse, or other animal being let to or hired, employed, or used by an elector, or several electors at their joint cost, for the purpose of conveying him or them to or from the poll

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(4.) No person shall be liable to pay any duty or to take out a license for any carriage by reason only of such carriage being used without payment or promise of payment for the conveyance of electors to or from the poll at an election.

11. Any person who corruptly induces or procures any other person to withdraw from being a candidate at a municipal election, in consideration of any payment or promise of payment, shall be guilty of illegal payment, and any person withdrawing in pursuance of such inducement or procurement shall also be guilty of illegal payment.

Corrupt withdrawal from a candidature.

12. (1.) No payment or contract for payment shall, for the purpose of promoting or procuring the election of a candidate at a municipal election, be made on account of bands of music, torches, flags, banners, cockades, ribbons, or other marks of distinction.

Certain expenditure to be illegal payment.

(2.) Subject to such exception as may be allowed in pursuance of this Act, if any payment or contract for payment is made in contravention of this section, either before, during, or after an election, the person making such payment shall be guilty of illegal payment, and any person being a party to any such contract or receiving such payment shall also be guilty of illegal payment if he knew that the same was made contrary to law.

13. (1.) No person shall, for the purpose of promoting or procuring the election of a candidate at a municipal election, be engaged or employed for payment or promise of payment for any purpose or in any capacity whatever, except as follows (that is to say),

Certain employment to be illegal.

(a.) a number of persons may be employed, not exceeding two for a borough or ward, and if the number of electors in such borough or ward exceeds two thousand one additional person may be employed for every thousand electors and incomplete part of a thousand electors over and above the said two thousand, and such persons may be employed as clerks and messengers, or in either capacity : and

(b.) one polling agent may be employed in each polling station :

Provided that this section shall not apply to any engagement or employment for carrying into effect a contract *bonâ fide* made with any person in the ordinary course of business.

(2.) Subject to such exception as may be allowed in pursuance of this Act, if any person is engaged or employed in contravention of this section, either before, during, or after an election, the person engaging or employing him shall be guilty



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of illegal employment, and the person so engaged or employed shall also be guilty of illegal employment if he knew that he was engaged or employed in contravention of this Act.

(3.) A person legally employed for payment under this section may or may not be an elector, but may not vote.

Name and  
address of  
printer on  
placards.

**14.** Every bill, placard, or poster having reference to a municipal election shall bear upon the face thereof the name and address of the printer and publisher thereof; and any person printing, publishing, or posting, or causing to be printed, published, or posted, any such bill, placard, or poster as aforesaid, which fails to bear upon the face thereof the name and address of the printer and publisher, shall, if he is a candidate, be guilty of an illegal practice, and if he is not the candidate, shall be liable on summary conviction to a fine not exceeding one hundred pounds.

Saving for  
creditors.

**15.** The provisions of this Act prohibiting certain payments and contracts for payments, and the payment of any sum, and the incurring of any expense, in excess of a certain maximum, shall not affect the right of any creditor who, when the contract was made or the expense was incurred, was ignorant of the same being in contravention of this Act.

Use of cer-  
tain pre-  
mises for  
committee  
rooms or  
meetings  
to be illegal  
hiring.

**16.** (1.) (a.) Any premises, which are licensed for the sale of any intoxicating liquor for consumption on or off the premises, or on which refreshment of any kind (whether food or drink) is ordinarily sold for consumption on the premises, or

(b.) Any premises where any intoxicating liquor is supplied to members of a club, society, or association, or any part of any such premises,

shall not, for the purpose of promoting or procuring the election of a candidate at a municipal election, be used either as a committee room or for holding a meeting, and if any person hires or uses any such premises or any part thereof in contravention of this section he shall be guilty of illegal hiring, and the person letting or permitting the use of such premises or part thereof, if he knew it was intended to use the same, in contravention of this section, shall also be guilty of illegal hiring.

(2.) Provided that nothing in this section shall apply to any part of such premises which is ordinarily let for the purpose of chambers or offices or the holding of public meetings or of arbitrations, if such part has a separate entrance and no direct communication with any part of the premises on which any intoxicating liquor or refreshment is sold or supplied as aforesaid.

Punishment  
of illegal  
payment,  
employment,  
or hiring.

**17.** (1.) A person guilty of an offence of illegal payment, employment, or hiring shall, on summary conviction, be liable to a fine not exceeding one hundred pounds.

(2.) Where an offence of illegal payment, employment, or

hiring is committed by a candidate, or with his knowledge and consent, such candidate shall be guilty of an illegal practice. APP. III.  
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18. Where upon the trial of an election petition respecting a municipal election for a borough or ward of a borough it is found by the election court that illegal practices or offences of illegal payment, employment, or hiring, committed in reference to such election for the purpose of promoting the election of a candidate at that election, have so extensively prevailed that they may be reasonably supposed to have affected the result of that election, the election court shall report such finding to the High Court, and the election of such candidate, if he has been elected, shall be void, and he shall not, during the period for which he was elected to serve, or for which, if elected, he might have served, be capable of being elected to or holding any corporate office in the said borough. Avoidance of election for extensive illegal practices, &c.

*Excuse and Exception for Corrupt or Illegal Practice or Illegal Payment, Employment, or Hiring.*

19. Where, upon the trial of an election petition respecting a municipal election, the election court reports that a candidate at such election has been guilty by his agents of the offence of treating and undue influence, and illegal practice, or of any of such offences, in reference to such election, and the election court further report that the candidate has proved to the court— Report exonerating candidate in certain cases of corrupt and illegal practice by agents.

- (a.) That no corrupt or illegal practice was committed at such election by the candidate or with his knowledge or consent, and the offences mentioned in the said report were committed without the sanction or connivance of such candidate; and
- (b.) That all reasonable means for preventing the commission of corrupt and illegal practices at such election were taken by and on behalf of the candidate; and
- (c.) That the offences mentioned in the said report were of a trivial, unimportant, and limited character; and
- (d.) That in all other respects the election was free from any corrupt or illegal practice on the part of such candidate and of his agents;

then the election of such candidate shall not, by reason of the offences mentioned in such report, be void, nor shall the candidate be subject to any incapacity under this Act.

20. Where, on application made, it is shown to the High Court or to a municipal election court by such evidence as seems to the Court sufficient— Power of High Court and election court to except innocent act from being illegal practice, &c.

- (a.) that any act or omission of a candidate at a municipal election for a borough or ward of a borough, or of any agent or other person, would, by reason of being

## APP. III.

in contravention of any of the provisions of this Act, be but for this section an illegal practice, payment, employment, or hiring; and

(b.) that such act or omission arose from inadvertence or from accidental miscalculation or from some other reasonable cause of a like nature, and in any case did not arise from any want of good faith; and

(c.) that such notice of the application has been given in the said borough as to the Court seems fit;

and under the circumstances it seems to the Court to be just that the said candidate, agent and person, or any of them, should not be subject to any of the consequences under this Act of the said act or omission, the Court may make an order allowing such act or omission to be an exception from the provisions of this Act which would otherwise make the same an illegal practice, payment, employment, or hiring, and thereupon such candidate, agent, or person shall not be subject to any of the consequences under this Act of the said act or omission.

Sending in  
claims and  
making pay-  
ments for  
election  
expenses.

**21. (1.)** Every claim against any person in respect of any expenses incurred by or on behalf of a candidate at an election of a councillor on account of or in respect of the conduct or management of such election shall be sent in within fourteen days after the day of election, and if not so sent in shall be barred and not paid, and all expenses incurred as aforesaid shall be paid within twenty-one days after the day of election, and not otherwise, and any person who makes a payment in contravention of this section, except where such payment is allowed as provided by this section, shall be guilty of an illegal practice, but if such payment was made without the sanction or connivance of the candidate, the election of such candidate shall not be void, nor shall he be subject to any incapacity under this Act by reason only of such payment having been made in contravention of this section.

(2.) Every agent of a candidate at an election of a councillor shall, within twenty-three days after the day of election, make a return to the candidate in writing of all expenses incurred by such agent on account of or in respect of the conduct or management of such election, and if he fails so to do shall be liable, on summary conviction, to a fine not exceeding fifty pounds.

(3.) Within twenty-eight days after the day of election of a councillor every candidate at such election shall send to the town clerk a return of all expenses incurred by such candidate or his agents on account of or in respect of the conduct or management of such election, vouched (except in the case of sums under twenty shillings) by bills stating the particulars and receipts, and accompanied by a declaration by the candidate

made before a justice in the form set forth in the Fourth Schedule to this Act, or to the like effect. A.P. III.

(4.) After the expiration of the time for making such return and declaration the candidate, if elected, shall not, until he has made the return and declaration (in this Act referred to as the return and declaration respecting election expenses), or until the date of the allowance of such authorised excuse, as is mentioned in this Act, sit or vote in the council, and if he does so shall forfeit fifty pounds for every day on which he so sits or votes to any person who sues for the same.

(5.) If the candidate without such authorised excuse as is mentioned in this Act fails to make the said return and declaration he shall be guilty of an illegal practice, and if he knowingly makes the said declaration falsely he shall be guilty of an offence, and on conviction thereof on indictment shall be liable to the punishment for wilful and corrupt perjury, and such offence shall also be deemed to be a corrupt practice within the meaning of this Act.

(6.) The county court for the district in which the election was held, or the High Court, or an election court, may, on application either of the candidate or a creditor, allow any claim to be sent in and any expense to be paid after the time limited by this section, and a return of any sum so paid shall forthwith after payment be sent to the town clerk.

(7.) If the candidate applies to the High Court or an election court, and shows that the failure to make the said return and declaration, or either of them, or any error or false statement therein, has arisen by reason of his illness or absence, or of the absence, death, illness, or misconduct of any agent, clerk, or officer, or by reason of inadvertence, or of any reasonable cause of a like nature, and not by reason of any want of good faith on the part of the applicant, the court may, after such notice of the application and on production of such evidence of the grounds stated in the application, and of the good faith of the applicant, and otherwise as to the court seems fit, make such order for allowing the authorised excuse for the failure to make such return and declaration, or for an error or false statement in such return or declaration, as to the court seems just.

(8.) The order may make the allowance conditional upon compliance with such terms as to the court seems calculated for carrying into effect the objects of this Act, and the order shall relieve the applicant from any liability or consequences under this Act in respect of the matters excused by the order.

(9.) The date of the order, or if conditions and terms are to be complied with, the date at which the applicant fully complies with them, is referred to in this Act as the date of the allowance of the excuse.

(10.) The return and declaration sent in pursuance of this

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Act to the town clerk shall be kept at his office, and shall at all reasonable times during the twelve months next after they are received by him be open to inspection by any person on payment of the fee of one shilling, and the town clerk shall, on demand, furnish copies thereof or of any part thereof at the price of twopence for every seventy-two words.

(11.) After the expiration of the said twelve months the town clerk may cause the return and declaration to be destroyed, or if the candidate so require shall return the same to him.

*Disqualification of Electors.*

Prohibition  
of persons  
guilty of  
offences from  
voting.

**22.** Every person guilty of a corrupt or illegal practice or of illegal employment, payment, or hiring at a municipal election is prohibited from voting at such election, and if any such person votes his vote shall be void, and shall be struck off on a scrutiny.

Application  
of ss. 37 & 38  
of 46 & 47  
Vict. c. 51.

**23.** So much of sections thirty-seven and thirty-eight of the Corrupt and Illegal Practices Prevention Act, 1883, as is set forth in Part Two of the Third Schedule to this Act, shall apply as part of this Act.

*Proceedings on Election Petitions.*

Petition for  
illegal prac-  
tice.

**25. (1.)** A municipal election petition complaining of the election on the ground of an illegal practice may be presented at any time before the expiration of fourteen days after the day on which the town clerk receives the return and declaration respecting election expenses by the candidate to whose election the petition relates, or where there is an authorised excuse for failing to make the return and declaration then within the like time after the date of the allowance of the excuse.

Time for  
presentation  
of petition  
alleging  
illegal  
practices.

(2.) A municipal election petition, complaining of the election on the ground of an illegal practice, and specifically alleging a payment of money or other act made or done since the election by the candidate elected at such election, or by an agent of the candidate, or with the privity of the candidate, in pursuance or in furtherance of such illegal practice, may be presented at any time within twenty-eight days after the date of such payment or act, whether or not any other petition against that person has been previously presented or tried.

45 & 46 Vict.  
c. 50.

(3.) Any election petition presented within the time limited by the Municipal Corporations Act, 1882, may, for the purpose of complaining of the election upon an allegation of an illegal practice, be amended with the leave of the High Court within the time within which a petition complaining of the election on the ground of that illegal practice can, under this section, be presented.



(4.) This section shall apply notwithstanding the illegal practice is also a corrupt practice. APP. III.

26. (1.) Before leave for the withdrawal of a municipal election petition is granted, there shall be produced affidavits by all the parties to the petition and their solicitors, but the High Court may on cause shown dispense with the affidavit of any particular person if it seems to the court on special grounds to be just so to do. Withdrawal of election petition.

(2.) Each affidavit shall state that, to the best of the deponent's knowledge and belief, no agreement or terms of any kind whatsoever has or have been made, and no undertaking has been entered into, in relation to the withdrawal of the petition; but if any lawful agreement has been made with respect to the withdrawal of the petition, the affidavit shall set forth that agreement, and shall make the foregoing statement subject to what appears from the affidavit.

(3.) The affidavits of the applicant and his solicitor shall further state the ground on which the petition is sought to be withdrawn.

(4.) If any person makes any agreement or terms, or enters into any undertaking, in relation to the withdrawal of an election petition, and such agreement, terms, or undertaking is or are for the withdrawal of the election petition in consideration of any payment, or in consideration that the seat shall at any time be vacated, or in consideration of the withdrawal of any other election petition, or is or are (whether lawful or unlawful) not mentioned in the aforesaid affidavits, he shall be guilty of a misdemeanour, and shall be liable on conviction on indictment to imprisonment for a term not exceeding twelve months, and to a fine not exceeding two hundred pounds.

(5.) Copies of the said affidavits shall be delivered to the Director of public prosecutions a reasonable time before the application for the withdrawal is heard, and the court may hear the Director of public prosecutions or his assistant or other representative (appointed with the approval of the Attorney-General), in opposition to the allowance of the withdrawal of the petition, and shall have power to receive the evidence on oath of any person or persons whose evidence the Director of public prosecutions or his assistant, or other representative, may consider material.

(6.) Where in the opinion of the court the proposed withdrawal of a petition was the result of any agreement, terms, or undertaking prohibited by this section, the court shall have the same power with respect to the security as under section ninety-five of the Municipal Corporations Act, 1882, where the withdrawal is induced by a corrupt consideration. 45 & 46 Vict.  
c. 50.

(7.) In every case of the withdrawal of an election petition, by leave of the election court such court shall report in writing to the High Court whether, in the opinion of such election



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court, the withdrawal of such petition was the result of any agreement, terms, or undertaking, or was in consideration of any payment, or in consideration that the seat should at any time be vacated, or in consideration of the withdrawal of any other election petition, or for any other consideration, and if so, shall state the circumstances attending the withdrawal.

(8.) Where more than one solicitor is concerned for the petitioner or respondent, whether as agent for another solicitor or otherwise, the affidavit shall be made by all such solicitors.

Continuation  
of trial of  
election  
petition.

**27.** The trial of every municipal election petition shall, so far as is practicable consistently with the interests of justice in respect of such trial, be continued *de die in diem* on every lawful day until its conclusion.

Attendance  
of Director  
of public  
prosecutions  
on trial of  
election  
petition, and  
prosecution  
by him of  
offenders.

**28.** (1.) On every trial of a municipal election petition the Director of public prosecutions shall by himself or by his assistant, or by such representative as hereinafter mentioned, attend at the trial, and it shall be the duty of such Director to obey any directions given to him by the election court with respect to the summoning and examination of any witness to give evidence on such trial, and with respect to the prosecution by him of offenders, and with respect to any person to whom notice is given to attend with a view to report him as guilty of any corrupt or illegal practice.

(2.) It shall also be the duty of such Director, without any direction from the election court, if it appears to him that any person is able to give material evidence as to the subject of the trial, to cause such person to attend the trial, and with the leave of the court to examine such person as a witness.

(3.) It shall also be the duty of the said Director, without any direction from the election court, if he thinks it expedient in the interests of justice so to do, to prosecute, either before the said court or before any other competent court, any person who has not received a certificate of indemnity and who appears to him to have been guilty of a corrupt or illegal practice at a municipal election.

(4.) Where a person is prosecuted before an election court for any corrupt or illegal practice, and such person appears before the court, the court shall proceed to try him summarily for the said offence, and such person, if convicted thereof upon such trial, shall be subject to the same incapacities as he is subject to under this or any other Act, upon conviction, whether on indictment or in any other proceeding for the said offence; and further, may be adjudged by the court, if the offence is a corrupt practice, to be imprisoned, with or without hard labour, for a term not exceeding six months, or to pay a fine not exceeding two hundred pounds, and if the offence is an illegal practice, to pay such fine as is fixed by this Act for the offence:

Provided that, in the case of a corrupt practice, the court,

before proceeding to try summarily any person, shall give such person the option of being tried by a jury. APP. III.

(5.) Where a person is so prosecuted for any such offence, and either he elects to be tried by a jury or he does not appear before the court, or the court thinks it in the interests of justice expedient that he should be tried before some other court, the court, if of opinion that the evidence is sufficient to put the said person upon his trial for the offence, shall order such person to be prosecuted on indictment or before a court of summary jurisdiction, as the case may require, for the said offence; and in either case may order him to be prosecuted before such court as may be named in the order; and for all purposes preliminary and of and incidental to such prosecution the offence shall be deemed to have been committed within the jurisdiction of the court so named.

(6.) Upon such order being made,

(a.) if the accused person is present before the court, and the offence is an indictable offence, the court shall commit him to take his trial, or cause him to give bail to appear and take his trial for the said offence; and

(b.) if the accused person is present before the court, and the offence is not an indictable offence, the court shall order him to be brought before the court of summary jurisdiction before whom he is to be prosecuted, or cause him to give bail to appear before that court; and

(c.) if the accused person is not present before the court, the court shall as circumstances require issue a summons for his attendance, or a warrant to apprehend him and bring him before a court of summary jurisdiction, and that court, if the offence is an indictable offence, shall, on proof only of the summons or warrant and the identity of the accused, commit him to take his trial, or cause him to give bail to appear and take his trial for the said offence, or if the offence is punishable on summary conviction, shall proceed to hear the case, or if such court be not the court before whom he is directed to be prosecuted shall order him to be brought before that court.

(7.) Any order or act of an election court under this section shall not be subject to be discharged or varied under subsection six of section ninety-two of the Municipal Corporations Act, 1882. 45 & 46 Vict.  
c. 50.

(8.) The Director of public prosecutions may nominate, with the approval of the Attorney-General, any barristers or solicitors of not less than ten years standing, one of whom shall, when required, act as the representative for the purposes of this section of such Director, and when so acting shall receive such remuneration as the Treasury may approve.

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There shall be allowed to the Director and his assistant or representative, for the purposes of this section, such allowance for expenses as the Treasury may approve.

(9.) The costs incurred in defraying the expenses of the Director of public prosecutions under this section (including the remuneration of his representatives) shall, in the first instance, be paid by the Treasury, and so far as they are not in the case of any prosecution paid by the defendant, shall be deemed to be expenses of the election court, and shall be paid as the expenses of that court are directed by section one hundred and one of the Municipal Corporations Act, 1882, to be paid; but if for any reasonable cause it seems just to the court so to do, the court shall order all or part of the said costs to be repaid to the Treasury by the parties to the petition, or such of them as the court may direct.

45 & 46 *Vict.*  
*c. 50.*

Power to  
election court  
to order pay-  
ment by  
borough or  
individual of  
costs of elec-  
tion petition.

**29. (1.)** Where upon the trial of a municipal election petition it appears to the election court that a corrupt practice has not been proved to have been committed in reference to the election by or with the knowledge and consent of the respondent to the petition, and that such respondent took all reasonable means to prevent corrupt practices being committed on his behalf, the court may make one or more orders with respect to the payment either of the whole or such part of the costs of the petition as the court may think right as follows:

(a.) if it appears to the court that corrupt practices extensively prevailed in reference to the said election, the court may order the whole or part of the costs to be paid by the borough; and

(b.) if it appears to the court that any person or persons is or are proved, whether by providing money or otherwise, to have been extensively engaged in corrupt practices, or to have encouraged or promoted extensive corrupt practices in reference to such election, the court may, after giving such person or persons an opportunity of being heard by counsel or solicitor and of examining and cross-examining witnesses to show cause why the order should not be made, order the whole or part of the costs to be paid by that person, or those persons or any of them, and may order that if the costs cannot be recovered from one or more of such persons they shall be paid by some other of such persons or by either of the parties to the petition.

(2.) Where any person appears to the court to have been guilty of the offence of a corrupt or illegal practice, the court may, after giving such person an opportunity of making a statement to show why the order should not be made, order the whole or any part of the costs of or incidental to any pro-

ceeding before the court in relation to the said offence or to the said person to be paid by the said person to such person or persons as the court may direct.

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(3.) The rules and regulations of the Supreme Court of Judicature with respect to costs to be allowed in actions, causes, and matters in the High Court shall in principle and so far as practicable apply to the costs of petition and other proceedings under Part Four of the Municipal Corporations Act, 1882, and this Act, and the taxing officer shall not allow any costs, charges, or expenses on a higher scale than would be allowed in any action, cause or matter in the High Court on the higher scale, as between solicitor and client.

*Miscellaneous.*

**30.** Subject to the other provisions of this Act, the procedure for the prosecution of a corrupt or illegal practice or any illegal payment, employment, or hiring committed in reference to a municipal election, and the removal of any incapacity incurred by reason of a conviction or report relating to any such offence, and the duties of the Director of public prosecutions in relation to any such offence, and all other proceedings in relation thereto (including the grant to a witness of a certificate of indemnity), shall be the same as if such offence had been committed in reference to a parliamentary election; and sections forty-five and forty-six and sections fifty to fifty-seven (both inclusive), and sections fifty-nine and sixty of the Corrupt and Illegal Practices Prevention Act, 1883, shall apply accordingly as if they were re-enacted in this Act with the necessary modifications, and with the following additions:—

General provisions as to prosecution of offences under this Act.

(a.) Where the Director of public prosecutions considers that the circumstances of any case require him to institute a prosecution before any court other than an election court for any offence other than a corrupt practice committed in reference to a municipal election in any borough, he may, by himself or his assistant, institute such prosecution before any court of summary jurisdiction in the county in which the said borough is situate or to which it adjoins, and the offence shall be deemed for all purposes to have been committed within the jurisdiction of such court; and

(b.) General rules for the purposes of Part Four of the Municipal Corporations Act, 1882, shall be made by the same authority as rules of court under the said sections; and

(c.) The giving or refusal to give a certificate of indemnity to a witness by the election court shall be final and conclusive.

46 & 47 Vict. c. 51.

s. 94. (7.)

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Persons incapacitated by conviction or report to vacate seat or office.

Payment and recovery of costs.

Service of notices.

Definitions.  
45 & 46 Vict.  
c. 50.  
46 & 47 Vict.  
c. 51.

**31.** If any person, in consequence of conviction or of the report of an election court under this Act, becomes not capable of being elected to or sitting in the House of Commons, or of being elected to or holding any public or judicial office, and such person, at the date of the said conviction or report, has been so elected or holds any such office, then his seat or office, as the case may be, shall be vacated as from that date.

**32.** (1.) Where any costs of a petition are, under an order of a municipal election court, to be paid by a borough, such costs shall be paid out of the borough fund or borough rate.

(2.) Where any costs or other sums are, under the order of an election court or otherwise under this Act, to be paid by any person, those costs shall be a simple contract debt due from such person to the person or persons to whom they are to be paid, and if payable to the Treasury shall be a debt to Her Majesty, and in either case may be recovered accordingly.

**33.** Where any summons, notice, or document is required to be served on any person with reference to any proceeding respecting a municipal election in any borough or ward of a borough, whether for the purpose of causing him to appear before the High Court or any election court, or otherwise, or for the purpose of giving him an opportunity of making a statement, or showing cause, or being heard by himself, before any such court, for any purpose of this Act, such summons, notice, or document may be served either by delivering the same to such person, or by leaving the same at, or sending the same by post by a registered letter to, his last known place of abode in the said borough, or, if the proceeding is before any court, in such other manner as the court may direct, and in proving such service by post it shall be sufficient to prove that the letter was prepaid, properly addressed, and registered with the post office.

**34.** In this Act expressions have the same meaning as in the Municipal Corporations Act, 1882, and in the Corrupt and Illegal Practices Prevention Act, 1883; except that the words "borough," "election petition," "election court," and "candidate," shall, unless the context otherwise requires, have the meaning given by the Municipal Corporations Act, 1882, and not the meaning given by the Corrupt and Illegal Practices Prevention Act, 1883; and except that "election" shall, unless the context otherwise requires, mean a municipal election.

For the purposes of this Act the number of electors shall be taken according to the enumeration of the electors in the burgess roll.



THIRD SCHEDULE.

PART I.

*Enactments defining Corrupt Practices.—Enactments defining the Offence of Bribery.*

The Corrupt Practices Prevention Act, 1854, 17 & 18 Vict.

C. 102, SS. 2, 3.

S. 2. The following persons shall be deemed guilty of bribery, and shall be punishable accordingly :—

Bribery defined.

- (1.) Every person who shall, directly or indirectly, by himself or by any other person on his behalf, give, lend, or agree to give or lend, or shall offer, promise, or promise to procure or endeavour to procure, any money or valuable consideration to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce any voter to vote or refrain from voting, or shall corruptly do any such act as aforesaid on account of such voter having voted or refrained from voting at any election.
- (2.) Every person who shall, directly or indirectly, by himself or by any other person on his behalf, give or procure, or agree to give or procure, or offer, promise, or promise to procure or endeavour to procure, any office, place, or employment to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce such voter to vote or refrain from voting, or shall corruptly do any such act as aforesaid on account of any voter having voted or refrained from voting at any election.
- (3.) Every person who shall, directly or indirectly, by himself or by any other person on his behalf, make any such gift, loan, offer, promise, procurement, or agreement as aforesaid, to or for any person, in order to induce such person to procure or endeavour to procure the return of any person to serve in Parliament, or the vote of any voter at any election.
- (4.) Every person who shall, upon or in consequence of any such gift, loan, offer, promise, procurement, or agreement, procure, or engage, promise, or endeavour to procure the return of any person to serve in Parliament, or the vote of any voter at any election.
- (5.) Every person who shall advance or pay, or cause to be paid, any money to or to the use of any other person



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Bribery  
further  
defined.

with the intent that such money, or any part thereof, shall be expended in bribery at any election, or who shall knowingly pay or cause to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election: Provided always, that the aforesaid enactment shall not extend or be construed to extend to any money paid or agreed to be paid for on account of any legal expenses *bonâ fide* incurred at or concerning any election.

S. 3. The following persons shall also be deemed guilty of bribery, and shall be punishable accordingly:—

- (1.) Every voter who shall, before or during any election, directly or indirectly, by himself or by any other person on his behalf, receive, agree, or contract for any money, gift, loan, or valuable consideration, office, place, or employment, for himself or for any other person, for voting or agreeing to vote, or from refraining or agreeing to refrain from voting at any election.
- (2.) Every person who shall, after any election, directly or indirectly, by himself or by any other person on his behalf, receive any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or refrain from voting at any election.

The Representation of the People Act, 1867, 30 & 31 Vict.  
c. 102, s. 49.

Corrupt pay-  
ment of rates  
to be punish-  
able as  
bribery.

S. 49. Any person, either directly or indirectly, corruptly paying any rate on behalf of any ratepayer for the purpose of enabling him to be registered as a voter, thereby to influence his vote at the future election, and any candidate or other person, either directly or indirectly, paying any rate on behalf of any voter for the purpose of inducing him to vote or refrain from voting, shall be guilty of bribery, and be punishable accordingly; and any person on whose behalf and with whose privity any such payment as in this section is mentioned is made, shall also be guilty of bribery, and punishable accordingly.

*Enactment defining the Offence of Personation.*

The Ballot Act, 1872, 35 & 36 Vict. c. 33, s. 24.

Personation  
defined.

S. 24. A person shall, for all purposes of the laws relating to parliamentary and municipal elections, be deemed to be guilty of the offence of personation who, at an election for a county or borough, or at a municipal election, applies for a ballot

paper in the name of some other person, whether that name be that of a person living or dead, or of a fictitious person, or who, having voted once at any such election, applies at the same election for a ballot paper in his own name.

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*Enactments defining the Offences of Treating and Undue Influence.*

The Corrupt and Illegal Practices Prevention Act, 1883,  
46 & 47 Vict. c. 51, ss. 1, 2.

S. 1. Any person who corruptly by himself or by any other person, either before, during, or after an election, directly or indirectly gives or provides, or pays wholly or in part the expense of giving or providing any meat, drink, entertainment, or provision to or for any person for the purpose of corruptly influencing that person or any other person to give or refrain from giving his vote at the election, or on account of such person or any other person having voted or refrained from voting, or being about to vote or refrain from voting at such election, shall be guilty of treating.

What is treating.

And every elector who corruptly accepts or takes any such meat, drink, entertainment, or provision, shall also be guilty of treating.

S. 2. Every person who shall directly or indirectly, by himself or by any other person on his behalf, make use of or threaten to make use of any force, violence, or restraint, or inflict or threaten to inflict by himself or by any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting at any election, or who shall by abduction, duress, or any fraudulent device or contrivance impede or prevent the free exercise of the franchise of any elector, or shall thereby compel, induce, or prevail upon any elector either to give or to refrain from giving his vote at any election, shall be guilty of undue influence.

What is undue influence.

*Enactment defining the Offences of Bribery, Treating, Undue Influence, and Personation.*

The Municipal Corporations Act, 1882, 45 & 46 Vict.  
c. 50, s. 77.

S. 77. "Bribery," "treating," "undue influence," and "personation" include respectively anything done before, at, after, or with respect to a municipal election, which, if done before, at, after, or with respect to a parliamentary election, would

Definitions.

APP. III.

make the person doing the same liable to any penalty, punishment, or disqualification for bribery, treating, undue influence, or personation, as the case may be, under any Act for the time being in force with respect to parliamentary elections.

## PART II.

*Enactments relating to Disqualification of Electors.*

The Corrupt and Illegal Practices Prevention Act, 1883,  
46 & 47 Vict. c. 51, ss. 37, 38.

Prohibition of  
disqualified  
persons from  
voting.  
35 & 36 Vict.  
c. 60.  
45 & 46 Vict.  
c. 50.

S. 37. Every person who, in consequence of conviction or of the report of any election court or election commissioners under this Act, or under the Corrupt Practices (Municipal Elections) Act, 1872, or under Part IV. of the Municipal Corporations Act, 1882, or under any other Act for the time being in force relating to corrupt practices at an election for any public office, has become incapable of voting at any election, whether a parliamentary election or an election to any public office, is prohibited from voting at any such election, and his vote shall be void.

Hearing of  
person before  
he is reported  
guilty of cor-  
rupt or illegal  
practice, and  
incapacity of  
person re-  
ported guilty.

S. 38. (1.) Before a person, not being a party to an election petition nor a candidate on behalf of whom the seat is claimed by an election petition, is reported by an election court \* \* \* to have been guilty, at an election, of any corrupt or illegal practice, the court \* \* \* shall cause notice to be given to such person, and if he appears in pursuance of the notice, shall give him an opportunity of being heard by himself and of calling evidence in his defence to show why he should not be so reported.

\* \* \*

(5.) Every person who, after the commencement of this Act, is reported by any election court \* \* \* to have been guilty of any corrupt or illegal practice at an election, shall, whether he obtained a certificate of indemnity or not, be subject to the same incapacity as he would be subject to if he had at the date of such election been convicted of the offence of which he is reported to have been guilty \* \* \*

(6.) Where a person who is a justice of the peace is reported by any election court \* \* \* to have been guilty of any corrupt practice in reference to an election, whether he has obtained a certificate of indemnity or not, it shall be the duty of the Director of Public Prosecutions to report the case to the Lord High Chancellor of Great Britain, with such evidence as may have been given of such corrupt practice, and where any such person acts as a justice of the peace by virtue of his being or having been mayor of a borough, the Lord High Chancellor shall have the same power to remove such person from being

a justice of the peace as if he was named in a commission of the peace. APP. III.

(7.) Where a person who is a barrister or solicitor, or who belongs to any profession the admission to which is regulated by law, is reported by any election court \* \* \* to have been guilty of any corrupt practice in reference to an election, whether such person has obtained a certificate of indemnity or not, it shall be the duty of the Director of Public Prosecutions to bring the matter before the Inn of Court, High Court, or tribunal having power to take cognizance of any misconduct of such person in his profession, and such Inn of Court, High Court, or tribunal may deal with such person in like manner as if such corrupt practice were misconduct by such person in his profession.

(8.) With respect to a person holding a licence or certificate under the Licensing Acts (in this section referred to as a licensed person) the following provisions shall have effect:—

(a.) If it appears to the court by which any licensed person is convicted of the offence of bribery or treating that such offence was committed on his licensed premises, the court shall direct such conviction to be entered in the proper register of licences :

(b.) If it appears to an election court \* \* \* that a licensed person has knowingly suffered any bribery or treating in reference to any election to take place upon his licensed premises, such court \* \* \* (subject to the provisions of this Act as to a person having an opportunity of being heard by himself and producing evidence before being reported) shall report the same ; and, whether such person obtained a certificate of indemnity or not, it shall be the duty of the Director of Public Prosecutions to bring such report before the licensing justices from whom or on whose certificate the licensed person obtained his licence, and such licensing justices shall cause such report to be entered in the proper register of licences :

(c.) Where an entry is made in the register of licences of any such conviction of or report respecting any licensed person as above in this section mentioned, it shall be taken into consideration by the licensing justices in determining whether they will or will not grant to such person the renewal of his licence or certificate, and may be a ground, if the justices think fit, for refusing such renewal.

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## MUNICIPAL VOTERS RELIEF ACT, 1885.

48 VICT. C. 9.

*An Act to relieve Municipal Voters from being disqualified in consequence of letting their Dwelling-houses for short periods.*  
[28th April 1885.]

- 41 & 42 Vict.  
c. 3. WHEREAS by the House Occupiers Disqualification Removal Act, 1878, provision was made that a man should be entitled to be registered as an inhabitant occupier of a dwelling-house under the third section of the Representation of the People Act, 1867, notwithstanding that during a part of the qualifying period not exceeding four months in the whole, he should by letting, or otherwise, have permitted the qualifying premises to be occupied as a furnished house by some other person :
- 30 & 31 Vict.  
c. 102. And whereas it is expedient to extend the said Acts to voters at municipal elections :
- Be it therefore enacted \* \* \*
- Short title. 1. This Act may be cited as the Municipal Voters Relief Act, 1885.
- Letting as furnished house for certain period not to disqualify. 2. From and after the passing of this Act a man shall not be disqualified from being enrolled or voting as a burgess at any municipal election in a borough, in respect of the occupation of any house, by reason only that during a part of the qualifying period, not exceeding four months in the whole, he has, by letting or otherwise, permitted such house to be occupied as a furnished dwelling-house by some other person, and during such occupation by another person has not resided in or within seven miles of the borough.
- Definitions. 3. In this Act—  
The expression “burgess” has, in England, the same meaning as in the Municipal Corporations Act, 1882.
- 45 & 46 Vict.  
c. 50. The expression “municipal election” has, in England, the same meaning as in the Municipal Corporations Act, 1882.

## ELECTIONS (HOURS OF POLL) ACT, 1885.

48 VICT. C. 10.

*An Act to extend the Hours of Polling at Parliamentary and Municipal Elections.*  
[28th April 1885.]

- Hours of polling. 1. At every parliamentary and every municipal election within the meaning of this Act, the poll (if any) shall commence at eight o'clock in the forenoon, and be kept open



till eight o'clock in the afternoon of the same day and no longer. APP. III.

4. This Act may be cited as the Elections (Hours of Poll) Act, 1885. Short title.

## MEDICAL RELIEF DISQUALIFICATION REMOVAL ACT, 1885.

48 & 49 VICT. C. 46.

*An Act to prevent Medical Relief disqualifying a person from voting.* [6th August 1885.]

1. This Act may be cited as the Medical Relief Disqualifi- Short title.  
cation Removal Act, 1885.

2.—(1.) Where a person has in any part of the United Kingdom received for himself, or for any member of his family, any medical or surgical assistance, or any medicine at the expense of any poor rate, such person shall not by reason thereof be deprived of any right to be registered or to vote either— Medical relief not to disqualify.

- (a.) as a parliamentary voter ; or
- (b.) as a voter at any municipal election ; or
- (c.) as a Burgess ; or
- (d.) as a voter at any election to an office under the provisions of any statute ;

but nothing in this section shall apply to the election—

- (a.) of any guardian of the poor ; or
- (b.) of any member of any parochial board in Scotland ; or
- (c.) of any other body acting in the distribution of relief to the poor from the poor rate.

(2.) Every person shall be qualified to be registered as a voter and to vote as aforesaid who would be so qualified if the provisions of this Act had come into force on the fifteenth day of July one thousand eight hundred and eighty-four.

4. The term “medical or surgical assistance” in this Act shall include all medical and surgical attendance, and all matters and things supplied by or on the recommendation of the medical officer having authority to give such attendance and recommendation at the expense of any poor rate. Definition of medical and surgical assistance.



APP. III.  

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PARLIAMENTARY ELECTIONS (RETURNING  
OFFICERS) ACT, 1885.

48 &amp; 49 VICT. C. 62.

*An Act to amend the law relating to the Charges of Returning  
Officers at Parliamentary Elections.* [14th August 1885.]

Short title.

1. This Act shall be construed, so far as regards England and Ireland, as one with the Parliamentary Elections (Returning Officers) Act, 1875, and together with that Act may be cited as the Parliamentary elections (Returning Officers) Acts, 1875 and 1885 \* \* \* and this Act may be cited separately as the Parliamentary Elections (Returning Officers) Act, 1885.

Increase of  
returning  
officer's  
charges in  
certain cases.

4. Notwithstanding the scale of charges laid down in the First Schedule of the Parliamentary Elections (Returning Officers) Act, 1875, it shall be lawful in any county constituency in England for the returning officer to charge four guineas for each presiding officer and thirty shillings for each clerk at a polling station.

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PARLIAMENTARY ELECTIONS (RETURNING  
OFFICERS) ACT (1875) AMENDMENT ACT, 1886.

49 &amp; 50 VICT. C. 57.

*An Act to amend the provisions of the Parliamentary Elections  
(Returning Officers) Act, 1875.* [25th June 1886.]Review of  
taxation.

1. The judge or officer by whom any account or claim is taxed or examined under the Parliamentary Elections (Returning Officers) Act, 1875 (herein called the "principal Act"), shall deliver to the returning officer, and to the other party to the taxation or examination, a certificate showing the items and amounts allowed or disallowed, with a copy of any order or judgment made thereon.

Either party may, within seven days of the delivery to him of such certificate, give notice in writing to the said judge or officer of intention to appeal, specifying in the notice the items and amounts in respect of which he intends to appeal.

The said judge or officer shall thereupon forthwith transmit to the prescribed taxing officer of the superior court the said account or claim, with any vouchers relating thereto, the certificate and the notice of appeal, and such taxing officer shall forthwith proceed to review the taxation or examination in the usual manner, or in such manner as may be prescribed, and shall, if required, receive evidence in relation to the

matters in dispute, and may confirm or vary the certificate, and direct by whom all or any part of the costs of review are to be paid, and shall return the certificate as confirmed or varied to the said judge or officer with any such direction, and effect shall be given to a certificate as so confirmed or varied, and to any such direction, as if the same had been a judgment of the court as defined in the principal Act.

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Any taxation or review of taxation under this Act shall be subject to appeal to the superior court in like manner as any ordinary taxation of costs is now subject.

In this Act "superior court" means in England the Queen's Bench Division of the High Court of Justice in England \* \* \*

"Prescribed" means prescribed by rules of the superior court in England or Ireland, as the case may be.

2. This Act may be cited as the Parliamentary Elections (Returning Officers) Act (1875) Amendment Act, 1886, and shall be read as one with the principal Act.

## COUNTY ELECTORS ACT, 1888.

51 VICT. C. 10.

*An Act to provide for the Qualification and Registration of Electors for the purposes of Local Government in England and Wales.*  
[16th May 1888.]

2.—(1.) For the purpose of the election of county authorities in England, the burgess qualification, that is to say, the qualification enacted by section nine of the Municipal Corporations Act, 1882, shall extend to every part of a county not within the limits of a borough, and a person possessing in any part of a county outside the limits of a borough such burgess qualification, shall be entitled to be registered under this Act as a county elector in the parish in which the qualifying property is situate.

Extension of  
burgess  
franchise to  
county  
electors  
outside  
municipal  
boroughs.  
45 & 46 Vict.  
c. 50.

(2.) Sections nine, thirty-one, thirty-three, and sixty-three of the Municipal Corporations Act, 1882, and any enactments of that or any other Act affecting the same, shall extend to so much of every county as is not comprised within the limits of a municipal borough in like manner as if they were herein re-enacted, with the substitution of "county" for "borough" and of "county elector" for "burgess," and with the other necessary modifications.

3. Every person who is entitled to be registered as a voter in respect of a ten pounds occupation qualification within the meaning of the provisions of the Registration Act, 1885, which are set out in the schedule to this Act, shall be entitled to be registered as a county elector, and to be enrolled as a burgess,

Occupation of  
land of the  
value of 10*l.*  
to qualify.

## APP. III.

in respect of such qualification, in like manner in all respects as if the sections of the Municipal Corporations Act, 1882, relating to a burgess qualification included the said ten pounds occupation qualification.

Roll of county  
electors.

7.—(1.) The clerk of the peace of every county shall make up a register of all persons registered as burgesses or county electors in the county, both for the county and for each electoral division into which the county is divided for the purpose of election of the county authority, and such number of copies as the clerk of the peace may require of the list of burgesses as revised shall be delivered by the town clerk to such clerk of the peace for the purpose of making up such register.

45 & 46 Vict.  
c. 50.

(2.) The Registration of Electors Acts, and sections forty-five, forty-eight, and seventy-one of the Municipal Corporations Act, 1882, shall apply, for the purposes of this section, with the substitution of clerk of the peace for town clerk, and of county register and division register for burgess roll and ward roll respectively, and of electoral division for ward, and of county fund for borough fund.

(4.) Provided that nothing in this section shall prevent a county elector from being registered in more than one division register.

48 & 49 Vict.  
c. 15.

(5.) Where in pursuance of section four of the Registration Act, 1885, the revising barrister has power to erase the name of any person as a parliamentary voter from division one of the occupiers list, such barrister, in lieu of erasing the name, shall place an asterisk or other mark against the name, and, in printing such lists, the name shall be numbered consecutively with the other names, but an asterisk or other mark shall be printed against the name, and a person against whose name such asterisk or other mark is placed shall not be entitled to vote in respect of such entry at a parliamentary election, but shall have the same right of voting at an election of a county authority as he would have if no such mark were placed against his name.

(6.) If under any Act of the present session of Parliament establishing a council for a county any portion of another county is added to that county for the purpose of such election, such portion of the county register as relates to the electors having qualifying property in the said part so added shall be deemed to be part of the county register of the county for which such council is elected, and the clerk of the peace and other officers shall take such steps as may be necessary for giving effect to these enactments.

Separate list  
of persons  
residing  
within fifteen  
miles of  
county.

12. A list of persons occupying property in a county, and residing within fifteen miles, but more than seven miles from the county, shall be made out in accordance with section forty-nine of the Municipal Corporations Act, 1882, and that

section shall apply as if it were herein re-enacted, with the substitution of "county" for "borough," and of "county elector" for "burgess," and of "clerk of the peace" for "town clerk."

APP. III.

## LOCAL GOVERNMENT (ENGLAND AND WALES) ACT, 1888.

51 &amp; 52 VICT. c. 41.

*An Act to amend the Laws relating to Local Government in England and Wales, and for other purposes connected therewith.*  
[13th August 1888.]

### PART I.

#### COUNTY COUNCILS.

##### *Constitution of County Council.*

1. A council shall be established in every administrative county as defined by this Act, and be entrusted with the management of the administrative and financial business of that county, and shall consist of the chairman, aldermen, and councillors.

Establishment  
of county  
council.

2.—(1.) The council of a county and the members thereof shall be constituted and elected and conduct their proceedings in like manner, and be in the like position in all respects, as the council of a borough divided into wards, subject nevertheless to the provisions of this Act, and in particular to the following provisions, that is to say:—

Composition  
and election  
of council  
and position  
of chairman.

(2.) As respects the aldermen or councillors—

(a.) clerks in holy orders and other ministers of religion shall not be disqualified for being elected and being aldermen or councillors;

(b.) a person shall be qualified to be an alderman or councillor who, though not qualified in manner provided by the Municipal Corporations Act, 1882, as applied by this Act, is a peer owning property in the county, or is registered as a parliamentary voter in respect of the ownership of property of whatsoever tenure situate in the county;

45 & 46 Vict.  
c. 50.

(c.) the aldermen shall be called county aldermen, and the councillors shall be called county councillors; and a county alderman shall not, as such, vote in the election of a county alderman;

## APP. III.

- (d.) the county councillors shall be elected for a term of three years, and shall then retire together, and their places shall be filled by a new election ; and
- (e.) the divisions of the county for the purpose of the election of county councillors, shall be called electoral divisions and not wards, and one county councillor only shall be elected for each electoral division :
- (3.) As respects the number of the county councillors, and the boundaries of the electoral divisions in every county—
- (a.) the number of the county councillors, and their apportionment between each of the boroughs which have sufficient population to return one councillor and the rest of the county, shall be such as the Local Government Board may determine ; and
- (b.) any borough returning one councillor only shall be an electoral division ; and
- (c.) in the rest of the county the electoral divisions shall be such as in the case of a borough returning more than one councillor the council of the borough, and in the rest of the county the quarter sessions for the county, may determine, subject in either case to the directions enacted by this Act ; and in the case of elections after the first, to any alterations made, in accordance with the said directions, in manner in this Act mentioned :
- (4.) As respects the electors of the county councillors—the persons entitled to vote at their election shall be, in a borough, the burgesses enrolled in pursuance of the Municipal Corporations Act, 1882, and the Acts amending the same, and elsewhere the persons registered as county electors under the County Electors Act, 1888 :
- (5.) As respects the chairman of the county council—
- (a.) he shall be called chairman instead of mayor ; and
- (b.) he shall, by virtue of his office, be a justice of the peace for the county ; but before acting as such justice he shall, if he has not already done so, take the oaths required by law to be taken by a justice of the peace other than the oath respecting the qualification by estate.

*Application of Act to Metropolis.*

Application  
of Act to  
Metropolis  
as county of  
London.

40. In the application of this Act to the Metropolis, the following provisions shall have effect :—

- (1.) The Metropolis shall, on and after the appointed day, be an administrative county for the purposes of this Act by the name of the administrative county of London.
- (4.) The number of the county councillors for the administrative county of London, shall be double the number of



members which at the passing of this Act, the parliamentary boroughs in the metropolis are authorized by law to return to serve in Parliament; and each such borough, or if it is divided into divisions, each division thereof, shall be an electoral division for the purposes of this Act, and the number of county councillors elected for each such electoral division, shall be double the number of members of Parliament which such borough or division is at the passing of this Act entitled to return to serve in Parliament:

- (5.) Provided that the number of county aldermen in the administrative county of London, shall not exceed one-sixth of the whole number of county councillors.

*Application of Act to Special Counties and to Liberties.*

**46.** For the purposes of this Act there shall be enacted the provisions following; that is to say, Application of Act to certain special counties.

- (1.)—(a.) The ridings of Yorkshire and the divisions of Lincolnshire shall respectively be separate administrative counties.
- (b.) The eastern and western divisions of Sussex, under the County of Sussex Act, 1865, and the eastern and western divisions of Suffolk, shall respectively be separate administrative counties for the purposes of this Act. 28 & 29 Vict. c. 37.
- (c.) The Isle of Ely, and the residue of the county of Cambridge, shall be respectively separate administrative counties for the purposes of this Act, and are in this Act referred to as divisions of the county of Cambridge.
- (d.) The soke of Peterborough and the residue of the county of Northampton shall be respectively separate administrative counties for the purposes of this Act, and are in this Act referred to as divisions of the county of Northampton.

**48.**—(1.) For all purposes of this Act, every liberty and franchise of a county, wholly or partly exempt from contribution to the county rate, shall, save as may be otherwise provided by or in pursuance of this Act, form part of the county of which it forms part for the purposes of parliamentary elections. Merger of liberties in county.

(4.) The Cinque Ports and two ancient towns and their members shall for all purposes of the county council and of the powers and duties of quarter sessions and justices out of sessions under this Act form part of the county in which they are respectively situate without prejudice nevertheless to the position of any such port, town, or member as a quarter sessions borough under the Municipal Corporations Act, 1882, 45 & 46 Vict. as amended by this Act, and without prejudice to the existing c. 50.



## APP. III.

Power to  
make Pro-  
visional Order  
for Scilly  
Islands.

privileges of such ports, towns, and members as respects matters which are not affected by this Act.

**49.**—(1.) It shall be lawful for the Local Government Board to make a Provisional Order for regulating the application of this Act to the Scilly Islands, and for providing for the exercise and performance in those islands of the powers and duties both of county councils and also of authorities under the Acts relating to highways and the Public Health Act, 1875, and the Acts amending the same, and for the application to the islands of any provisions of any Act touching local government, and any such Order may provide for the establishment of councils and other local authorities separate from those in the county of Cornwall, and for the contribution by the Scilly Islands to the county council of Cornwall in respect of costs incurred by the county council for matters specified in the said Order as benefiting the Scilly Islands, and such Order may also provide for all matters which appear to the Local Government Board necessary or proper for carrying the Order into full effect.

(2.) Any such Order shall not be in force until it is confirmed by Parliament.

(3.) Subject to the provisions of a Provisional Order under this Act, the county council of Cornwall shall have no greater powers or duties in the Scilly Islands than the quarter sessions of Cornwall have hitherto in fact exercised or performed therein, and the Scilly Islands shall not be included for the purposes of this Act in any electoral division of the county of Cornwall.

## PART III.

*Boundaries.*

Boundary of  
county for  
first election.

**50.**—(1.) The first council elected under this Act for any administrative county shall, subject as hereinafter mentioned, be elected for the county at large as bounded at the passing of this Act for the purpose of the election of members to serve in Parliament for the county: Provided always, that—

(a.) This enactment shall not apply to the boundary between two administrative counties which are portions of one entire county, and in case of those administrative counties, the boundary between the portions, as existing for the purposes of county rate, shall, subject to any change made by or in pursuance of this Act, be the boundary of the administrative county for which the council is elected; and,

(b.) Where any urban sanitary district is situate partly within and partly without the boundary of such county, the

district shall be deemed to be within that county which contains the largest portion of the population of the district, according to the census of one thousand eight hundred and eighty-one.

- (c.) Where any portion of an administrative county has before the passing of this Act been transferred to another administrative county for the purposes of the Acts relating to the police or contagious diseases (animals) or otherwise, nothing in this Act shall affect such transfer.

- (d.) The wapentake of the ainsty of York (except so much as is included in the municipal borough of York as extended by the York Extension and Improvement Act, 1884), shall for all purposes of this Act be deemed to be part of the west riding of the county of York. 47 & 48 Vict. c. ccxxxii.

(2.) The county council elected under this Act shall have for the purposes of this Act authority throughout the administrative county for which it is elected, and the administrative county as bounded for the purpose of the election shall, subject to alterations made in manner hereinafter mentioned, be for all the purposes of this Act the county of such county council.

(3.) If any difference arises as to the county which contains the largest portion of the population of any such district as above in this section mentioned, such difference shall be referred to the Local Government Board, whose decision shall be final.

(4.) This section applies to an administrative county within the meaning of this Act, save that it shall not apply to the administrative county of London, nor to any county borough, and any place which, though forming part of any such borough for the purposes of the election of members to serve in Parliament, is not within the municipal boundary of such borough shall, notwithstanding anything in the foregoing provisions of this section, form, for the purposes of this section, part of the county in which such place is situate.

**51.** In the constitution of electoral divisions of a county, whether for the first election or for subsequent elections, the following directions shall be observed— Directions for constitution of electoral divisions.

- (1.) The divisions shall be arranged with a view to the population of each division being, so nearly as conveniently may be, equal, regard being had to a proper representation both of the rural and of the urban population, and to the distribution and pursuits of such population, and to area, and to the last published census for the time being, and to evidence of any considerable change of population since such census ;
- (2.) Electoral divisions shall, so far as may be reasonably practicable, be framed so that every division shall be

## APP. III.

a county district or ward, or a combination of county districts or wards, or be comprised in one county district or ward, but where an electoral division is a portion of a county district or ward, and such portion has not a defined area for which a separate list or part of a list of voters is made under the Acts relating to the registration of electors, such portion shall, until a new register of electors is made, continue to be part of the district or ward of which it has been treated as being part in the then current register of electors ;

- (3.) Whenever under the provisions of this section a county district is divided into two or more portions, every such portion shall, as far as possible, consist of an entire parish or of a combination of entire parishes ;
- (4.) In determining the electoral divisions for the first election, the foregoing provisions shall apply as if, where a rural sanitary district is situate in more than one county, each portion of the district which is situate in the same county were a county district, and any such portion may be combined with a county district, or portion of a county district, although not adjoining ;
- (5.) The electoral divisions for the first election shall be fixed on or before the eighth day of November next after the passing of this Act.

Provisional  
Order as  
respects  
boroughs and  
urban sanitary  
districts in  
same area.

**52.—(1.)** The Local Government Board shall make Provisional Orders for dealing with every case where the council of a borough is not the urban sanitary authority for the whole of the area of such borough, and the area of the borough is either co-extensive with or is wholly or partly comprised in any urban sanitary district, and such Order shall determine whether the area of the borough or of the sanitary district, or an area comprising both the borough and the urban sanitary district, or a portion of such united area, shall, whether with or without any adjoining area, be the area of the county district for the purposes of this Act, so, however, that in either case the Order shall provide for the council of the borough becoming the district council, and the Order may for that purpose alter the boundaries of the borough, and may, if need be, alter the boundaries of the county ; and if the population exceeds fifty thousand, the Order may constitute the borough into a county borough, and make such provision as may be necessary for carrying this Act into effect as respect such county borough ; and the provisions of this Act respecting county boroughs shall, subject to the provisions of the Order, apply.

(2.) Where certain members of the sanitary authority for any such urban sanitary district are appointed by a university or any colleges therein, the Order may provide for the appoint-

ment by such university or colleges of members on the district council. APP. III.

(3.) A Provisional Order under this section shall not be of any effect until it is confirmed by Parliament.

**54.—(1.)** Whenever it is represented by the council of any county or borough to the Local Government Board— Future alterations of boundaries.

- (a) that the alteration of the boundary of any county or borough is desirable ; or
  - (b) that the union, for all or any of the purposes of this Act, of a county borough with a county is desirable ; or
  - (c) that the union, for all or any of the purposes of this Act, of any counties or boroughs or the division of any county is desirable ; or
  - (d) that it is desirable to constitute any borough having a population of not less than fifty thousand into a county borough ; or
  - (e) that the alteration of the boundary of any electoral division of a county, or of the number of county councillors and electoral divisions in a county, is desirable ; or
  - (f) that the alteration of any area of local government partly situate in their county or borough is desirable ;
- the Local Government Board shall, unless for special reasons they think that the representation ought not to be entertained, cause to be made a local inquiry, and may make an Order for the proposal contained in such representation, or for such other proposal as they may deem expedient, or may refuse such Order, and if they make the Order may by such Order divide or alter any electoral division.

(2.) Provided that in default of such representation by the council of any county or borough before the first day of November one thousand eight hundred and eighty-nine, the Local Government Board may cause such local inquiry to be made, and thereupon may make such Order as they may deem expedient.

(3.) Provided that if the Order alters the boundary of a county or borough, or provides for the union of a county borough with a county, or for the union of any counties or boroughs, or for the division of any county, or for constituting a borough into a county borough, it shall be provisional only, and shall not have effect unless confirmed by Parliament.

(4.) Where such Order alters the boundary of a borough, it may, as consequential upon such alteration, do all or any of the following things, increase or decrease the number of the wards in the borough, and alter the boundaries of such wards, and alter the apportionment of the number of councillors among the wards, and alter the total number of councillors, and in such case, make the proportionate alteration in the number of aldermen.

APP. III.

(5.) At any time before the appointed day, the Local Government Board may make an Order in pursuance of this section without any such representation as in this section mentioned.

Contents of  
Provisional  
Order amal-  
gamating  
two county  
boroughs.

**55.—(1.)** Where the Local Government Board make a Provisional Order for uniting two county boroughs, such Order may make them one borough and one county for the purposes of this Act.

(2.) Such Order, and also any other Order under this Act for uniting boroughs, whether county boroughs or not, may also contain such provisions as may seem necessary or proper for regulating the division of the combined borough into wards, the number of councillors to be elected for each ward, and the first election of the council of the combined borough, and for providing for the clerks of the peace, coroners, town clerks, and officers of the boroughs, and the application to them of the provisions of this Act as to existing officers, and for providing for all matters incidental to or consequential on the union of the boroughs.

General  
provision as to  
alteration of  
boundaries.

**60.** In every alteration of boundaries effected under the authority of this Act, care shall be taken that, so far as practicable, the boundaries of an area of local government shall not intersect the boundaries of any other area of local government.

## PART V.

### SUPPLEMENTAL.

#### *Application of Acts.*

Application of  
45 & 46 Vict.  
c. 50 to  
county  
councils and  
this Act.  
47 & 48 Vict.  
c. 70.

**75.** For the purpose of the provisions of this Act with respect to county councils, and to the chairmen, members, committees, and officers of such councils, and otherwise for the purpose of carrying this Act into effect, the following portions of the Municipal Corporations Act, 1882, namely, Part Two, Part Three, Part Four (as amended by the Municipal Elections (Corrupt Practices) Act, 1884), section one hundred and twenty-four in Part Five, Part Twelve, Part Thirteen, the Second Schedule, Part Two and Part Three of the Third Schedule, and Part One of the Eighth Schedule shall, so far as the same are unrepealed and are consistent with the provisions of this Act, apply as if they were herein re-enacted with enactments amending the same in such terms and with such modifications as are necessary to make them applicable to the said council and their chairmen, members, committees, and officers, and to the other provisions of this Act.

Provided as follows:—

(1.) In a year in which county councillors are elected, the



elections of those councillors, and of councillors of a borough, shall be conducted together.

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- (2.) Such person as the county council may appoint shall be the returning officer for the election of county councillors of the county council, in substitution for the mayor, and for the aldermen assigned for that purpose by the council.
- (3.) The returning officer, without prejudice to any other power, may by writing under his hand appoint a fit person to be his deputy for all or any of the purposes relating to the election of any such councillor, and may by himself or such deputy exercise any powers and do any things which a returning officer is authorized or required to exercise or do in relation to such election, and shall for the purposes of the election have all the powers of the sheriff.
- (4.) A reference in this Act, or in the enactments applied by this Act, to the returning officer or to the mayor or to the alderman shall, so far as relates to the election of any such councillor, be construed to refer to the returning officer, and any such deputy as above mentioned.
- (5.) A reference in the said enactments to the town clerk so far as respects the election of any such councillor shall be construed to refer to the returning officer or his deputy, and as respects matters subsequent to the election, shall be construed to refer to the clerk of the county council.
- (6.) In a borough the returning officer for the purpose of the election of councillors of the borough shall continue to be the same as heretofore, and where an electoral division of the county is co-extensive with or wholly comprised in such borough, shall at the election in such division of a councillor of the county council act as the returning officer in pursuance of a writ directed to him from the county returning officer, and so far as respects that election shall follow the instructions of, and return the names of the persons elected to the county returning officer in like manner as if he were a deputy returning officer, and any decision of an objection shall be subject to revision by the county returning officer accordingly, and a reference in the said enactments to the town clerk shall, as respects the borough, be construed to refer to the town clerk.
- (7.) Some place fixed by the returning officer shall, except where the election is in a borough, be substituted for the town clerk's office, and, as respects the hearing of objections to nomination papers, for the town



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hall, but such place shall, if the electoral division is the whole or part of an urban district, be in that district, and in any other case shall be in the electoral division or in an adjoining electoral division.

- (8.) The returning officer shall forthwith after the election of county councillors for the county return the names of the persons elected to the clerk of the county council.
- (9.) The period between the nomination and election may be such period, not exceeding six days, as the returning officer may fix.
- (10.) An outgoing alderman shall not as alderman vote in the election of a chairman.
- (11.) The hours of the poll shall be those fixed by the Elections (Hours of Poll) Act, 1885.
- (12.) Section eleven of the Municipal Corporations Act, 1882, with respect to the qualification of a county councillor by reason of his being entered in the separate non-resident list, shall include, for the purposes of this Act, all persons entered in such separate list in any municipal borough by reason of occupation of property in the borough, and all persons entered in such separate list for any part of a county not in a municipal borough by reason of the occupation of property in that part.
- (13.) The seventh of November shall be substituted for the ninth of November as the ordinary day of election of the chairman and of county aldermen, and as the day for holding a quarterly meeting of the county council.
- (14.) Ten days shall be substituted for five days in section thirty-four of the Municipal Corporations Act, 1882, as the time within which a person elected to a corporate office is to accept that office, and twelve months shall be substituted for six months in section thirty-nine of the said Act, as the period of absence which disqualifies an alderman or councillor.
- (15.) The quorum of the council shall be one-fourth of the whole number of the council, and one-fourth shall, for the purposes of this section, be substituted for one-third in paragraph ten of the second schedule to the Municipal Corporations Act, 1882.
- (16.) Nothing in the Municipal Corporations Act, 1882, as applied by this section—
  - (a) shall alter the application of any fine, penalty, or forfeiture recoverable in a summary manner; or,
  - (b) shall apply any of the provisions of the Municipal Corporations Act, 1882, with reference to boun-

48 & 49 Vict.  
c. 10.

daries or the alteration of wards or borough auditors, nor any of the following provisions, namely, subsection five of section fifteen, section sixteen, section two hundred and fifty-one, or section two hundred and fifty-seven ; or

- (c) shall render any person elected to a corporate office without his consent to his nomination being previously obtained liable to pay a fine on non-acceptance of office, or render a chairman or deputy chairman disqualified as such by reason of absence ; or
- (d) shall authorize or require a returning officer to hold an election of a councillor to fill a casual vacancy in the representation of an electoral division where the vacancy occurs within six months before the time fixed by this Act for a new election of a councillor to represent such electoral division ; or
- (e) shall apply to a county council section seventeen of the said Act with respect to the town clerk, nor, unless the county council so resolve, section eighteen respecting the treasurer, but, if the county council so resolve, section eighteen shall supersede the existing enactments with respect to the county treasurer ; or,
- (f) shall require the acts and proceedings of the standing joint committee of the county council and quarter sessions to be submitted to the county council for their approval ; or
- (g) shall prevent the use of schools and public rooms for the purpose of taking the poll at elections under this Act, but section six of the Ballot Act, 1872, 35 & 36 Vict. shall apply in the case of elections under this Act, <sup>c. 33.</sup> and the returning officer may, in addition to using such rooms free of charge for taking the poll, use the same free of charge for hearing objections to nomination papers and for counting votes.
- (17.) All costs properly incurred in relation to the holding of elections of councillors of county councils, so far as not otherwise provided for by law, shall be paid out of the county fund as general expenses.
- (18.) The said costs shall not exceed those allowed by Part I. of the First Schedule to the Parliamentary 38 & 39 Vict. Elections (Returning Officers) Act, 1875, as amended <sup>c. 84.</sup> by the Parliamentary Elections (Returning Officers) 48 & 49 Vict. Act, 1885, or by such scale as the county council <sup>c. 62.</sup> may from time to time frame.
- (19.) Sections four, five, six, and seven of the Parliamentary Elections (Returning Officers) Act, 1875, as amended 49 & 50 Vict. by the Parliamentary Elections (Returning Officers) <sup>c. 57.</sup>

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Act (1875) Amendment Act, 1886, shall apply as if they were herein re-enacted with the necessary modifications, and in particular with the substitution of the county council for the person from whom payment is claimed, and of one month for the period of fourteen days within which application may be made for taxation.

(20.) A county council shall, on the request of the returning officer, prior to a poll being taken at any election of a councillor of such council, advance to him such sum not exceeding ten pounds for every thousand electors at the election as he may require.

(21.) The meeting of a county council, or of any committee thereof, may be held at such place either within or without their county, as the council from time to time direct.

**Amendment of 51 & 52 Vict. c. 10.** **76.**—(6.) It is hereby declared that nothing in section twelve of the County Electors Act, 1888, applies to any person occupying property within a borough.

Residential qualification of county electors in administrative county of London.

**77.** A person who is entitled to be registered as a county elector in respect of any qualification in the administrative county of London, in all respects except that of residence, and is resident beyond seven miles but within fifteen miles of the county, shall be entitled to be registered as a county elector.

*Officers.*

Clerk of the peace and of county council.

**83.** Subject to the provisions of this Act for the protection of clerks of the peace holding office at the passing of this Act, the following provisions shall have effect:—

(1.) The clerk of the peace of a county, besides acting as clerk of the peace of that county, shall also (subject to the provisions of this Act as respects particular counties) be the clerk of the county council, and in that capacity is referred to in this Act as the clerk of the county council.

(2.) He shall be from time to time appointed by the standing joint committee of the county council and the quarter sessions, and may be removed by that joint committee.

*Definitions.*

Definition of "written."

**99.** All notices and documents required by this Act to be in writing may be in writing or print, or partly in writing and partly in print, and for the purposes of this section "print" includes any mechanical mode of reproduction.

Interpretation of certain terms in the Act.

**100.** In this Act, if not inconsistent with the context, the following terms have the meanings hereinafter respectively assigned to them; that is to say:—

The expression "county" does not include a county of a city or county of a town :

The expression "entire county" means, in the case of a county divided into administrative counties, the whole of the county formed by those administrative counties.

The expression "division of a county," in the provisions of this Act respecting the property of quarter sessions, includes any hundred, lathe, wapentake, or other like division :

The expression "administrative county," means the area for which a county council is elected in pursuance of this Act, but does not (except where expressly mentioned) include a county borough :

The expression "metropolis" means the city of London and the parishes and places mentioned in Schedules A., B., and C. to the Metropolis Management Act, 1855, as amended by subsequent Acts : 18 & 19 Vict.  
c. 120.

The expression "borough" means any place for the time being subject to the Municipal Corporations Act, 1882, and any reference to the mayor, aldermen, and burgesses of a borough shall include a reference to the mayor, aldermen, and citizens of a city : \* \* \* 45 & 46 Vict.  
c. 50.

The expression "parish" means a place for which a separate overseer is or can be appointed, and where part of a parish is situate within, and part of it without, any county, borough, urban sanitary district, or other area, means each such part :

The expressions "parliamentary county," and "parliamentary election," and "parliamentary voters," have the same meaning as in the Registration Act, 1885, and the Acts therein referred to : \* \* \* 48 & 49 Vict.  
c. 15.

The expression "existing" means existing at the time specified in the enactment in which the expression is used, and if no such time is expressed, then at the day appointed to be for the purpose of such enactment the appointed day : \* \* \*

The expression "person" includes any body of persons, whether corporate or unincorporate : \* \* \*

The expression "property" includes all property, real and personal, and all estates, interests, easements, and rights, whether equitable or legal, in, to, and out of property real and personal, including things in action, and registers, books, and documents ; and when used in relation to any quarter sessions, clerk of the peace, justices, board, sanitary authority, or other authority, includes any property which on the appointed day belongs to, or is vested in, or held in trust for, or would but for this Act have, on or after that day, belonged to, or been vested in, or held in trust for, such quarter sessions, clerk of the peace, justices,

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board, sanitary authority, or other authority; and the expression "property" shall further include, in the case of the county of Chester, any surplus revenue of the River Weaver Trust, which is or would but for this Act be payable to the quarter sessions: \* \* \*

The expression "expenses" includes cost and charges:

The expression "costs" includes charges and expenses: \* \*

The expression "office" includes any place, situation, or employment, and the expression "officer" shall be construed accordingly:

The expression "the divisions of Lincolnshire" means the parts of Holland, the parts of Kesteven, and the parts of Lindsey: \* \* \*

In relation to the election of county councillors, the day of nomination shall be deemed to be the day on which the names of the persons nominated are fixed on the town hall or other conspicuous place.

Short title.

**102.** This Act may be cited as the Local Government Act, 1888.

## PART VI.

## TRANSITORY PROVISIONS.

*First Election of County Councillors.*

First election  
of county  
councillors.

**103.**—(1.) The first election of county councillors under this Act shall be held in the month of January next after the passing of this Act on such day in each county not earlier than the fourteenth day of January as the returning officer for that county may fix, and the returning officer shall publish notice of such day in the preceding month of December, and the day so fixed shall be deemed for the purposes of the first election to be the ordinary day of election of county councillors.

(2.) The sheriff of each county shall be the returning officer for such first election, but if the sheriff desires to be a candidate at such election the county quarter sessions on his application may appoint another person to be the returning officer, and the person so appointed shall, for the purpose of such election, have the powers and duties of the sheriff.

(3.) At the first election, the returning officer may, if it appears to him necessary, divide an electoral division into polling districts, so however that every polling district shall be an area or a combination of areas for which separate parts of the register of electors are made out, and he shall settle and give proper notice of the places at which the poll for each electoral division, or district of a division, shall be taken.

(4.) The clerk of the peace who will by virtue of this Act



become the clerk of the county council when elected, shall make up the county register and division registers of the county electors for the purposes of the first election, and shall deliver the same to the returning officer, and every clerk of the peace who has in his custody any revised lists of electors required for making up such registers, shall supply to the above-mentioned clerk of the peace such number of copies of those lists as he may require for the purpose of making up the said registers.

(5.) The returning officer shall send to the clerk of the peace, who will by virtue of this Act become the clerk of the county council, the names of the persons elected, and shall send to each person elected a county councillor notice of his election, accompanied by a summons to attend the first meeting of the provisional council fixed by this Act at such time and place as the returning officer may fix.

(6.) The costs properly incurred by the returning officer in reference to the first election, and in reference to such first meeting of the provisional council, shall be defrayed as expenses of the county council, and may be taxed on an application made by or by direction of the provisional council.

(7.) In the administrative county of London, the returning officer for the first election shall be such fit person as the Local Government Board may appoint, and such returning officer shall, for the purposes of such election, have the powers and duties of the sheriff, and any sheriff, under sheriff, officer of the London School Board, or other public officer having authority in the Metropolis, and being in possession of any ballot boxes or other fittings or arrangements for an election shall permit such returning officer to use the same for the purposes of such first election.

(8.) Such returning officer shall make up the county register and division registers of the county electors for the purposes of the first elections, and shall make them up out of the lists of voters made out in the year one thousand eight hundred and eighty-eight for the city of London, and for such portions of the counties of Middlesex, Surrey, and Kent, as are comprised in the Metropolis, and shall make the necessary alteration in the forms of those lists, and the secondary of the city of London, and the town clerks within the meaning of the Registration Acts for the parliamentary boroughs in the administrative county of London, and the clerks of the peace of Middlesex, Surrey, and Kent, shall deliver to the said returning officer such number of copies of the revised lists of electors as he may require. The returning officer for the administrative county of London shall send the names of the persons elected to the clerk of the Metropolitan Board of Works.

(9.) The court of quarter sessions in any county, and the Metropolitan Board of Works in the Metropolis, shall advance



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to the returning officer such sum as is authorized by this Act to be advanced by county councils to returning officers for the purposes of an election.

(10.) The sheriff having authority in any administrative county, or the largest part thereof, shall for the purposes of this Act be deemed to be the sheriff of that county.

Retirement of  
first county  
councillors.

**104.**—(1.) The county councillors of a county council elected at the first election shall retire from office on the ordinary day of election in the third year after the passing of this Act, and their places shall be filled by election.

(2.) Of the first county aldermen one half shall retire on the ordinary day of election of county aldermen in the third year next after the passing of this Act, and the one half who are so to retire shall be determined by ballot by the provisional councillors at the time of the election of the county aldermen: Provided that where the total number of aldermen is not divisible by two the larger half shall first retire.

(3.) The remaining half of the county aldermen shall retire on the ordinary day of election of county aldermen in the sixth year next after the passing of this Act.

(4.) In this section the word "year" shall be construed to mean calendar year.

Preliminary  
action of  
county  
councillors as  
provisional  
council.

**105.**—(1.) The members of a county council first elected under this Act shall not enter on their ordinary duties or become the county council until the first day of April next after their election, or such other day as on the application of the provisional council the Local Government Board may appoint.

(2.) Such members shall, on the second Thursday next after the day fixed for the first election, and thenceforward from time to time until the day above mentioned in this section, meet and act as a provisional council for arranging to bring this Act into operation.

(3.) The provisional councillors shall at their first meeting elect one of their number to be chairman of that meeting and of the second meeting, and shall then at that meeting, or some adjournment thereof, proceed to elect the county aldermen in like manner as if they were a fully constituted county council, and such county aldermen shall be summoned to attend at the second meeting of the provisional council, and shall form part of the provisional council both for the election of chairman and all other purposes.

(4.) The provisional council shall, at their second meeting, or some adjournment thereof, proceed to elect as their chairman a person qualified to be chairman of the county council, and may from time to time fill any vacancy in the office of such chairman, and the person elected chairman shall be chairman of the provisional council, and also on and after the appointed day of the county council, and the term of office of such

chairman shall end on the next ordinary day of election of chairman. APP. III.

(5.) This enactment shall extend to the vice-chairman and deputy chairman.

**106.**—(3.) The provisional council of a county shall be entitled to use the buildings belonging to the quarter sessions of that county, so that they do not interfere with the holding of any court, and the clerk of the peace and his officers, and the officers of the quarter sessions shall, if required, act as the officers of such provisional council and further the provisional council may from time to time hire such buildings and appoint such interim officers as appear to them necessary for the performance of their duties, and the costs incurred in the hiring of such buildings and payment of such officers or otherwise in the performance of their duties shall be defrayed as costs properly incurred by the county council. First proceedings of provisional council.

(5.) In the metropolis the foregoing provisions with respect to the use of buildings and the action of officers shall apply as if the Metropolitan Board of Works were the quarter sessions of the county, and as if any quarter sessions for the counties of Middlesex, and Surrey were the quarter sessions of the county of London. \* \* \*

*General Provision as to First Elections.*

**107.**—(1.) If at the first election a person is elected a county councillor for more than one electoral division of that county his choice as to the division for which he will serve shall be made by writing addressed to the returning officer, and if not so made, the returning officer shall, on or before the day for the first meeting of the provisional council, determine the division for which such person shall sit. Casual vacancies at first elections.

(2.) Any casual vacancy arising at the first election from a person being elected for more than one electoral division or being elected a county alderman or from a failure of election or otherwise, may be filled in like manner as a casual vacancy in the county council may be filled, and the sheriff or other officer authorized to act as returning officer at the first election shall be the returning officer at any election held to fill a casual vacancy before the appointed day.

(3.) Such number of members as have been elected for a county council at the first election shall subject to any order of the Local Government Board to the contrary under this Act proceed to act as a provisional council under this Act, notwithstanding any vacancy or vacancies arising from failure of election or otherwise.

(4.) In case of equality of votes at the first or second meeting of a provisional county council, the chairman of the meeting shall have a second or casting vote, and where on the

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selection of the chairman of the meeting an equal number of votes is given to two or more persons, the meeting shall determine by lot which of those persons shall be the chairman.

(5.) The first meeting of the county council shall be held on the day appointed for the council coming into office, and shall be convened by the chairman of the provisional county council.

(6.) Such first meeting, and also the first meeting of the provisional county council, shall be convened in like manner as meetings of the county council are required by this Act, and the enactments applied by this Act, to be convened, and as if the person convening the same were the chairman.

Power of  
Local  
Government  
Board to  
remedy  
defects.

**108.**—(1.) If from any cause there is no returning officer able to act in any county at the first election of a county council, or no register of electors properly made up, or no proper election takes place, or an election of an insufficient number of persons takes place, or any difficulty arises as respects the holding of the first election of county councillors, or as to the first meeting of a provisional council, the Local Government Board may by order appoint a returning officer or other officer, and do any matter or thing which appears to them necessary for the proper holding of the first election, and for the proper holding of the first meeting of the provisional council, and may, if it appears to them necessary, direct a new election to be held, and fix the dates requisite for such new election. Any such Order may modify the provisions of this Act and the enactments applied by this Act so far as may appear to the Board necessary for the proper holding of the first election and first meeting of the provisional council.

(2.) The Local Government Board in the case of the first election may also authorize an electoral division to return two or more members, in any case where the difficulties arising out of the registers of voters and the population of any area appear to render it necessary, and may also authorize portions of two or more county districts, or wards for which a separate register can be made, to be united for the purpose of an electoral division.

(3.) The Local Government Board, on the application of a county council or provisional council, may within six months after the day fixed for the first election of the councillors of such council, from time to time, make such Orders as appear to them necessary for bringing this Act into full operation as respects the council so applying, and such Orders may modify any enactment in this or any other Act, whether general or local and personal, so far as may appear to the Board necessary for the said purpose.

(4.) The Local Government Board may also, if satisfied that an election cannot properly be held for any county council by reason of the electoral divisions not having been duly made,

cause such steps to be taken as they consider necessary for constituting such electoral divisions and making up the registers of electors. APP. III.  
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*Appointed Day.*

**109.**—(1.) Subject as in this Act mentioned, the appointed day for the purposes of this Act shall in each county be the first day of April next after the passing thereof, or such other day, earlier or later, as the Local Government Board (but after the election of county councillors for such county on the application of the provisional council or county council) may appoint, either generally or with reference to any particular provision of this Act, and different days may be appointed for different purposes and different provisions of this Act, whether contained in the same section or in different sections or for different counties. Appointed Day.

(2.) Any enactment of this Act authorizing anything to be done by the Commissioners of Inland Revenue or the Local Government Board, or relating to the registration of electors, or to the elections, or to any matter required to be done for the purpose of bringing this Act into operation on the appointed day, shall come into effect on the passing of this Act; but, save as aforesaid, and save so far as there may be anything in the context inconsistent therewith, any enactment of this Act shall come into operation on the appointed day.

*Repeals.*

**126.** All enactments inconsistent with this Act are hereby repealed; Provided that— Repeal of Acts.

(1.) Any enactment or document referring to any Act or enactment hereby repealed shall be construed to refer to this Act, or to the corresponding enactment in this Act:

(2.) This repeal shall not affect—

- (a.) The past operation of any enactment hereby repealed, nor anything duly done or suffered under any enactment hereby repealed; or
- (b.) Any right, privilege, obligation, or liability acquired, accrued, or incurred under or in accordance with any enactment hereby repealed; or
- (c.) Any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment hereby repealed; or
- (d.) Any power, investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid; and any such power, investigation, legal proceeding, and remedy may be exercised and carried on as if this Act had not passed.

1883.

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GENERAL RULES

FOR THE EFFECTUAL EXECUTION OF PART IV.  
OF "THE MUNICIPAL CORPORATIONS ACT, 1882,"

MADE BY

SIR CHARLES EDWARD POLLOCK, Knight ;

SIR HENRY MANISTY, Knight ; and

SIR HENRY CHARLES LOPES, Knight ;

THE JUDGES FOR THE TIME BEING ON THE ROTA FOR  
THE TRIAL OF PARLIAMENTARY ELECTION PETITIONS.

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1. The presentation of a municipal election petition shall be made by leaving it at the office of the Master for the time being nominated as prescribed officer, under the Parliamentary Elections Act, 1868, and such Master or his clerk shall (if required) give a receipt which may be in the following form :—

Received on the                      day of                      at  
the Master's office a petition touching the election of  
*A.B.*, alderman, councillor, [*&c. as the case may be*] for the  
borough of                      purporting to be  
signed by [*insert the names of Petitioners*].

*C.D.*, Master's Clerk.

With the petition shall also be left a copy thereof for the Master to send to the town clerk, pursuant to section 88, sub-section (3), of the Act.



2. A municipal election petition shall contain the following statements: APP. III.

(1.) It shall state the right of the petitioner or petitioners to petition within section 88, sub-section (1), of the Act.

(2.) It shall state the holding and result of the election, and shall briefly state the facts and grounds relied on to sustain the prayer.

3. The petition shall be divided into paragraphs, each of which, as nearly as may be, shall be confined to a distinct portion of the subject, and every paragraph shall be numbered consecutively, and no costs shall be allowed of drawing or copying any petition not substantially in compliance with this rule, unless otherwise ordered by the High Court or a judge thereof.

4. The petition shall conclude with a prayer, as for instance, that some specified person should be declared duly returned or elected, or that the election should be declared void, or that a return may be enforced, (as the case may be,) and shall be signed by all the petitioners.

5. The following form, or one to the like effect, shall be sufficient :—

In the High Court of Justice,

"The Municipal Corporations Act, 1882."

Election for [state the place and office for which election held]  
holden on the                      day of                      A.D.

The petition of *A.* of \_\_\_\_\_, and *B.* of \_\_\_\_\_ [or of *A.* of \_\_\_\_\_]

as the case may be] whose names are subscribed.

(1.) Your petitioner *A.* is a person who voted [*or had a right to vote, as the case may be*] at the above election, [*or was a candidate at the above election*]; and your petitioner *B.* [*here state in like manner the right of each petitioner*].

(2.) And your petitioners state that the election was holden on the \_\_\_\_\_ day of \_\_\_\_\_ A.D. \_\_\_\_\_, when *A.B.*, *C.D.*, and *E.F.* were candidates, and that *A.B.* and *C.D.* have been in the usual manner declared to be duly elected.

(3.) And your petitioners say that [*here state the facts and grounds on which the petitioners rely*].

Wherefore your petitioners pray that it may be determined that the said *A.B.* was not duly elected, and that the election was void [*or that the said E.F. was duly elected and ought to have been returned, or as the case may be*].

(Signed)

A.

*B.*

6. Evidence need not be stated in the petition, but the High Court or a judge thereof may order such particulars as may be necessary to prevent surprise and unnecessary expense, and to



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insure a fair and effectual trial in the same way as in ordinary proceedings in the said High Court, and upon such terms as to costs and otherwise as may be ordered.

7. When a petitioner claims the office for an unsuccessful candidate, alleging that he had a majority of lawful votes, the party complaining of or defending the election shall, six days before the day appointed for trial, deliver to the Master and also at the address, if any given by the petitioners and respondent, as the case may be, a list of the votes intended to be objected to, and the heads of objection to each such vote, and the Master shall allow inspection and office copies of such lists to all parties concerned; and no evidence shall be given against the validity of any vote, nor upon any head of objection not specified in the list, except by leave of the High Court or a judge thereof, upon such terms as to amendment of the list, postponement of the inquiry, and payment of costs, as may be ordered.

8. When the respondent in a petition under the Act complaining of an undue election, and claiming the office for some person, intends to give evidence to prove that the election of such person was undue, pursuant to the 93rd section of the Act, sub-section 10, such respondent shall, six days before the day appointed for trial, deliver to the Master, and also at the address, if any, given by the petitioner, a list of the objections to the election upon which he intends to rely, and the Master shall allow inspection and office copies of such list to all parties concerned; and no evidence shall be given by a respondent of any objection to the election not specified in the list, except by leave of the High Court or a judge thereof, upon such terms as to amendment of the list, postponement of the inquiry, and payment of costs, as may be ordered.

9. With the petition the petitioner or petitioners shall leave at the office of the Master a writing, signed by him or them or on his or their behalf, giving the name of some person entitled to practise as a solicitor in the High Court of Justice, whom he or they authorize to act as his or their agent, or stating that he or they act for himself or themselves, as the case may be, and in either case giving an address, within three miles from the General Post Office, at which notices addressed to him or them may be left; and if no such writing be left or address given, then notice of objection to the recognizances, and all other notices and proceedings may be given by sticking up the same at the Master's office.

10. Any person elected to any municipal office may at any time after he is elected send to or leave at the office of the Master a writing, signed by him or on his behalf, appointing a person entitled to practise as a solicitor in the High Court of Justice, to act as his agent in case there should be a petition against him, or stating that he intends to act for himself, and

in either case giving an address within three miles from the General Post Office at which notices may be left, and in default of such writing being left in a week after service of the petition, notices and proceedings may be given and served respectively by sticking up the same at the Master's office.

11. The Master shall keep a book or books at his office in which he shall enter all addresses and the names of agents given under either of the preceding rules, which book shall be open to inspection by any person during office hours.

12. The Master shall, upon the presentation of the petition, forthwith send a copy of the petition to the town clerk, pursuant to section 88 of the Act, sub-section (3), and shall therewith send the name of the petitioner's agent, if any, and the address, if any, given as prescribed, and also the name of the respondent's agent, and the address, if any, given as prescribed, and the town clerk shall forthwith publish those particulars along with the petition.

The cost of publication of this and any other matter required to be published by the town clerk shall be paid by the petitioner or person moving in the matter, and shall form part of the general costs of the petition.

13. The time for giving notice of the presentation of a petition and of the nature of the proposed security, shall be five days, exclusive of the day of presentation.

14. Where the respondent has named an agent or given an address, the service of a municipal election petition may be by delivery of it to the agent, or by posting it in a registered letter to the address given at such time that, in the ordinary course of post, it would be delivered within the prescribed time.

In other cases the service must be personal on the respondent, unless a judge of the High Court, on an application made to him not later than five days after the petition is presented on affidavit, showing what has been done, shall be satisfied that all reasonable effort has been made to effect personal service and cause the matter to come to the knowledge of the respondent, in which case the judge may order that what has been done shall be considered sufficient service, subject to such conditions as he may think reasonable. An agent employed for the petitioner or respondent shall forthwith leave written notice at the office of the Master of his appointment to act as such agent, and service of notices and proceedings upon such agent shall be sufficient for all purposes.

15. In case of evasion of service the sticking up a notice in the office of the Master of the petition having been presented, stating the petitioner, the prayer, and the nature of the proposed security, shall be deemed equivalent to personal service if so ordered by a judge.

16. The deposit of money by way of security for payment of costs, charges, and expenses payable by the petitioner,

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shall be made by payment into the Bank of England to an account to be opened there by the description of "The Municipal Corporations Act, 1882, Security Fund," which shall be vested in and drawn upon from time to time by the Lord Chief Justice of England for the time being, for the purposes for which security is required by the said Act, and a bank receipt or certificate for the same shall be forthwith left at the Master's office.

17. The Master shall file such receipt or certificate, and keep a book open to inspection of all parties concerned, in which shall be entered from time to time the amount and the petition to which it is applicable.

18. All claims at law or in equity to money so deposited or to be deposited in the Bank of England shall be disposed of by the High Court of Justice or a judge thereof.

19. Money so deposited shall, if, and when the same is no longer needed for securing payment of such costs, charges, and expenses, be returned or otherwise disposed of as justice may require, by rule of the High Court, or order of a judge thereof.

20. Such rule or order may be made after such notice of intention to apply, and proof that all just claims have been satisfied or otherwise sufficiently provided for, as the court or judge may require.

21. The rule or order may direct payment either to the party in whose name the same is deposited, or to any person entitled to receive the same.

22. Upon such rule or order being made, the amount may be drawn for by the Lord Chief Justice of England for the time being.

23. The draft of the Lord Chief Justice of England for the time being shall in all cases be a sufficient warrant to the Bank of England for all payments made thereunder.

24. The recognizance as security for costs may be acknowledged before a judge of the High Court or the Master in town, or a justice of the peace in the country.

There may be one recognizance acknowledged by all the sureties, or separate recognizances by one or more, as may be convenient.

25. The recognizance shall contain the name and usual place of abode of each surety, with such sufficient description as shall enable him to be found or ascertained, and may be as follows:—

Be it remembered that on the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord 18\_\_\_\_, before me [*name and description*], came *A.B.*, of [*name and description as above prescribed*] and acknowledged himself [*or severally acknowledged themselves*] to owe to our Sovereign Lady the Queen the sum of five hundred pounds [*or the following sums*], (that is to say) the

said *C.D.* the sum of £ , the said *E.F.* the sum of £ , the said *G.H.* the sum of £ , and the said *J.K.* the sum of £ , to be levied on his [*or their respective*] goods and chattels, lands, and tenements, to the use of our said Sovereign Lady the Queen, her heirs and successors.

The condition of this recognizance is that if [*here insert the names of all the petitioners, and if more than one, add, or any of them*] shall well and truly pay all costs, charges, and expenses in respect of the election petition signed by him [*or them*] relating to the [*here insert the name of the borough*] which shall become payable by the petitioner [*or petitioners, or any of them,*] under the Municipal Corporations Act, 1882, to any person or persons, then this recognizance to be void, otherwise to stand in full force.

Signed,

[*Signature of sureties.*]

Taken and acknowledged by the above-named [*name of sureties*] on the at , before me, *C.D.*

A justice of the peace [*or, as the case may be*].

26. The recognizance or recognizances shall be left at the Master's office, by or on behalf of the petitioner in like manner as before prescribed for the leaving of a petition forthwith after being acknowledged.

The security may (unless the High Court or a judge thereof shall otherwise order on summons), be given to any amount not less than £300; but the High Court or a judge thereof may, on summons taken out within five days from the service of the notice of the nature and amount of the security, order that the same shall be increased within a time to be fixed in the order by further security to be given in the manner directed by the Act, for a further amount, not exceeding with the amount for which security shall have been already given £500. And in default of compliance with such order, no further proceedings shall be had on the petition.

27. The time for giving notice of any objection to a recognizance under the 89th section of the Act, sub-section (4), shall be within five days from the date of service of the notice of the petition and of the nature of the security, exclusive of the day of service, or in case of further security within five days after service of notice of the nature thereof, exclusive of the day of such service.

28. An objection to the recognizance must state the ground or grounds thereof, as that the sureties, or any and which of them, are insufficient, or that a surety is dead, or that he cannot be found, or that a person named in the recognizance has not duly acknowledged the same.

29. Any objection made to the security shall be heard and

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decided by the Master, subject to appeal within five days to a judge, upon summons taken out by either party to declare the security sufficient or insufficient.

30. Such hearing and decision may be either upon affidavit or personal examination of witnesses, or both, as the Master or judge may think fit.

31. If an objection be allowed and the security be declared insufficient, the Master or judge shall in his order state what amount he deems requisite to make the security sufficient, and the further prescribed time to remove the objection by deposit shall be within five days from the date of the order, not including the day of the date, and such deposit shall be made in the manner already prescribed.

32. The costs of hearing and deciding the objections made to the security given shall be paid as ordered by the Master or judge, and in default of such order shall form part of the general costs of the petition.

33. The costs of hearing and deciding an objection upon the ground of insufficiency of a surety or sureties, shall be paid by the petitioner, and a clause to that effect shall be inserted in the order declaring its sufficiency or insufficiency, unless at the time of leaving the recognizance with the Master there be also left with the Master an affidavit of the sufficiency of the surety or sureties sworn by each surety before a justice of the peace, which affidavit any justice of the peace is hereby authorized to take, or before some person authorized to take affidavits in the High Court of Justice that he is seised or possessed of real or personal estate, or both, above what will satisfy his debts, of the clear value of the sum for which he is bound by his recognizance, which affidavit may be as follows:

In the High Court of Justice.

Municipal Corporations Act, 1882.

I *A.B.*, of [*as in recognizance*] make oath and say that I am seised or possessed of real [*or personal*] estate above what will satisfy my debts, of the clear value of £

Sworn, &c.

34. The order of the Master for payment of costs shall have the same force as an order made by a judge, and may be enforced in like manner as a judge's order in an ordinary proceeding in the High Court of Justice.

35. A copy of every order (other than an order giving further time for delivering particulars, or for costs only), or, if the Master shall so direct, the order itself or a duplicate thereof, also a copy of every particular delivered, shall be forthwith filed with the Master, and the same shall be produced at the trial by the registrar, stamped with the official seal. Such order shall be filed by the party obtaining the same, and such particular by the party delivering the same.



36. The petitioner or his agent shall, immediately after notice of the presentation of a petition and of the nature of the proposed security shall have been served, file with the Master an affidavit of the time and manner of service thereof.

37. The days mentioned in rules 7 and 8, and in any rule of court or judge's order, whereby particulars are ordered to be delivered, or any act is directed to be done, so many days before the day appointed for trial, shall be reckoned exclusively of the day of delivery, or of doing the act ordered and the day appointed for trial, and exclusively also of Sunday, Christmas-day, Good Friday, and any day set apart for a public fast or public thanksgiving.

38. When the last day for presenting petitions, or filing lists of votes or objections, under rules 7 and 8, or recognizances, or any other matter required to be filed within a given time, shall happen to fall on a holiday, the petition or other matter shall be deemed duly filed if put into the letter box at the Master's office at any time during such day; but an affidavit, stating with reasonable precision the time when such delivery was made, shall be filed on the first day after the expiration of the holidays.

39. The Master shall make out the municipal election list. In it he shall insert the names of the agents of the petitioners and respondents, and the addresses to which notices may be sent, if any. The list may be inspected at the Master's office at any time during office hours, and shall be put up for that purpose upon a notice board appropriated to proceedings under the said Act, and headed "Municipal Election List."

40. The time of the trial of each municipal election petition shall be fixed by the election judges on the rota or any one of them, who shall signify the same to the Master, and notice thereof shall be given in writing by the Master by sticking notice up in his office, sending one copy by post to the address given by the petitioner, another to the address given by the respondent, if any, and a copy by the post to the town clerk of the borough to which the petition relates, fifteen days before the day appointed for the trial.

The town clerk shall forthwith publish the same in the borough.

41. The sticking up of the notice of trial at the office of the Master shall be deemed and taken to be notice in the prescribed manner within the meaning of the Act, and such notice shall not be vitiated by any miscarriage of or relating to the copy or copies thereof to be sent as already directed.

42. The notice of trial may be in the following form:—

Municipal Corporations Act, 1882.

Election petition of

Borough of

Take notice that the above petition [*or* petitions]



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will be tried at	on the
day of	and on such other subsequent days
as may be needful.	
Dated the	day of
	Signed, by order,
	A.B.,

The Master appointed under the above Act.

43. A judge may from time to time, by order made upon the application of a party to the petition, or by notice in such form as the judge may direct to be sent to the town clerk, postpone the beginning of the trial to such day as he may name, and such notice when received shall be forthwith made public by the town clerk.

44. In the event of the barrister to whom the trial of the petition is assigned not having arrived at the time appointed for the trial, or to which the trial is postponed, the commencement of the trial shall *ipso facto* stand adjourned to the ensuing day, and so from day to day.

45. No formal adjournment of the court for the trial of a municipal election petition shall be necessary, but the trial is to be deemed adjourned, and may be continued from day to day until the inquiry is concluded.

46. After receiving notice of the petitioner's intention to apply for leave to withdraw, or of the respondent's intention not to oppose, or of the abatement of the petition by death, or of the happening of any of the events mentioned in the 97th section of the Act, if such notice be received after notice of trial shall have been given, and before the trial has commenced, the Master shall forthwith countermand the notice of trial. The countermand shall be given in the same manner, as near as may be, as the notice of trial.

47. If all the respondents shall give notice of their intention not to oppose the petition, and no other person shall be admitted as a respondent, the High Court of Justice, or a judge, may either declare the election void or direct the trial to proceed. Notice of such order shall be forthwith given by the Master to the town clerk, and if the election be declared void the office shall be deemed to be vacant from the first day (not being a *dies non*) after the date of such order.

The court or judge may also make such order as to costs as may be just.

48. The application to state a special case may be made by motion in the High Court of Justice, or by a summons before a judge thereof.

49. The title of the court held for the trial of a municipal election petition may be as follows:—

“ Court for the trial of a municipal election petition	
for the borough of [or	as may
be] between	petitioner

and respondent,"  
and it shall be sufficient so to entitle all proceedings in that court.

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—

50. An officer shall be appointed for each court for the trial of a municipal election petition by the election judges, at the time that they assign the petition to the barrister; such officer shall attend at the trial in like manner as the clerks of assize and of arraigns attend at the assizes.

Such officer may be called the registrar of that court. He, by himself, or in case of need, his sufficient deputy, shall perform all the functions incident to the officer of a court of record, and also such duties as may be prescribed to him.

51. The Commissioner may appoint a proper person to act as crier and officer of the court.

52. The shorthand writer to attend at the trial of a petition shall be the shorthand writer to the House of Commons for the time being or his deputy, and the Master shall send a copy of the notice of trial to the said shorthand writer to the House of Commons.

53. The amount to be paid to any witness whose expenses shall be allowed by the Commissioner trying the petition shall be ascertained and certified by the registrar; or in the event of his becoming incapacitated from giving such certificate, by the Commissioner.

54. The order of the court to compel the attendance of a person as a witness may be in the following form:—

Court for the trial of a municipal election petition for  
[complete the title of the court] the day of  
To A.B. [describe the person]. You are hereby required  
to attend before the above court at [place] on day of  
at the hour of [or forthwith, as the case  
may be], to be examined as a witness in the matter of the  
said petition, and to attend the said court until your  
examination shall have been completed.

As witness my hand, A.B.,

The Commissioner to whom the trial of the  
said petition is assigned.

55. In the event of its being necessary to commit any person for contempt, the warrant may be as follows:

At a court holden on at  
for the trial of a municipal election petition for the  
borough of before A.B.,  
one of the barristers appointed for the trial of  
municipal election petitions, pursuant to "The  
Municipal Corporations Act, 1882."

Whereas C.D. has this day been guilty, and is by the said court adjudged to be guilty, of a contempt thereof. The said court does therefore sentence the said C.D. for his said contempt to be imprisoned in the gaol for calendar

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months [*or as may be*], and to pay to our Lady the Queen a fine of £ , and to be further imprisoned in the said gaol until the said fine be paid, and the court further orders that the sheriff of the borough [*if any or as the case may be*], and all constables and officers of the peace of any county, borough or place where the said *C.D.* may be found, shall take the said *C.D.* into custody and convey him to the said gaol, and there deliver him into the custody of the gaoler thereof, to undergo his said sentence; and the court further orders the said gaoler to receive the said *C.D.* into his custody, and that he shall be detained in the said gaol in pursuance of the said sentence.

Signed the

day of

A.B.

56. Such warrant may be made out and directed to the sheriff or other person having the execution of process of the High Court as the case may be, and to all constables and officers of the peace of the county, borough, or place where the person adjudged guilty of contempt may be found, and such warrant shall be sufficient without further particularity, and shall and may be executed by the persons to whom it is directed or any or either of them.

57. All interlocutory questions and matters, except as to the sufficiency of the security, shall be heard and disposed of before a judge, who shall have the same control over the proceedings under the Municipal Corporations Act, 1882, as a judge in the ordinary proceedings of the High Court, and such questions and matters shall be heard and disposed of by any judge of the High Court.

58. Notice of an application for leave to withdraw a petition shall be in writing and signed by the petitioners or their agent.

It shall state the ground on which the application is intended to be supported.

The following form shall be sufficient :—

Municipal Corporations Act, 1882.

Borough of  
presented

Petition of [*state petitioners*]  
day of

The petitioner proposes to apply to withdraw his petition upon the following ground [*here state the ground*], and prays that a day may be appointed for hearing his application.

Dated this

day of

(Signed)

59. The notice of application for leave to withdraw shall be left at the Master's office.

60. A copy of such notice of the intention of the petitioner to apply for leave to withdraw his petition shall be given by the petitioner to the respondent, and to the town clerk, who

shall cause the same to be published in the borough to which it relates. APP. III.

The following may be the form of such notice :—  
Municipal Corporations Act, 1882.

In the election petition for \_\_\_\_\_ in which  
is petitioner and  
respondent.

Notice is hereby given, that the above petitioner has on the \_\_\_\_\_ day of \_\_\_\_\_ lodged at the Master's office notice of an application to withdraw the petition, which notice the following is a copy [*set it out*].

And take notice that by the rule made by the judges, any person who might have been a petitioner in respect of the said election may, within five days after publication by the town clerk of this notice, give notice in writing of his intention on the hearing to apply for leave to be substituted as a petitioner.

(Signed)

61. Any person who might have been a petitioner in respect of the election to which the petition relates, may, within five days after such notice is published by the returning officer, give notice, in writing, signed by him or on his behalf, to the Master of his intention to apply at the hearing to be substituted for the petitioner, but the want of such notice shall not defeat such application, if in fact made at the hearing.

62. The time and place for hearing the application shall be fixed by a judge, and whether before the High Court, or before a judge, as he may deem advisable, but shall not be less than a week after the notice of the intention to apply has been given to the Master as hereinbefore provided, and notice of the time and place appointed for the hearing shall be given to such person or persons, if any, as shall have given notice to the Master of an intention to apply to be substituted as petitioners, and otherwise in such manner and at such time as the court or judge directs.

63. Notice of abatement of a petition, by death of the petitioner or surviving petitioner, under section 96, sub-section (1), of the said Act, shall be given by the party or person interested in the same manner as a notice of an application to withdraw a petition, and the time within which application may be made to the High Court, or a judge thereof, by motion or summons at chambers, to be substituted as a petitioner, shall be one calendar month, or such further time as upon consideration of any special circumstances the High Court or a judge thereof may allow.

64. If the respondent dies, any person entitled to be a petitioner under the Act in respect of the election to which the petition relates, may give notice of the fact in the borough by causing such notice to be published in at least one newspaper

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—

circulating therein, if any, and by leaving a copy of such notice signed by him or on his behalf with the town clerk, and a like copy with the Master.

65. The manner of the respondent's giving notice that he does not intend to oppose the petition shall be by leaving notice thereof in writing at the office of the Master signed by the respondent.

66. Upon such notice being left at the Master's office, the Master shall forthwith send a copy thereof by the post to the petitioner or his agent, and to the town clerk, who shall cause the same to be published in the borough.

67. The time for applying to be admitted as a respondent in either of the events mentioned in the 97th section of the Act shall be within ten days after such notice is given as hereinbefore directed, or such further time as the High Court or a judge thereof may allow.

68. Costs shall be taxed by the Master, or at his request by any Master of the superior court upon the rule of court or judge's order by which the costs are payable, and costs when taxed may be recovered in like manner as if payable under a rule of court, judgment, or order of a judge in the ordinary proceedings in the High Court of Justice, or in case there be money in the Bank available for the purpose, then to the extent of such money by order of the Lord Chief Justice of England for the time being.

The office fees payable for inspection, office copies, enrolment, and other proceedings under the Act and these rules, shall be the same as those payable, if any, for like proceedings according to the present practice of the High Court of Justice.

69. No proceedings under the Municipal Corporations Act, 1882, shall be defeated by any formal objection.

70. Any rule made or to be made in pursuance of the Act shall be published by a copy thereof being put up at the Master's office.

Dated the 17th day of April 1883.

C. E. POLLOCK,

H. MANISTY,

HENRY C. LOPES,

The judges for the time being on the rota  
for the trial of Parliamentary Election  
Petitions.

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## CROWN OFFICE RULES, 1886.

## INFORMATIONS.

46. With the exception of ex-officio informations filed by the Attorney-General on behalf of the Crown no criminal information or information in the nature of a quo warranto shall be exhibited, received, or filed at the Crown Office Department without express order of the Queen's Bench Division in open court, nor shall any process be issued upon any information other than an ex-officio information, until the person procuring such information to be exhibited shall have filed at the Crown Office Department a recognizance in the penalty of £50 effectually to prosecute such information and to abide by and observe such orders as the court shall direct, such recognizance to be entered into before the Queen's coroner and attorney or the master of the Crown Office, or a justice of the peace of the county, borough, or place in which the cause may have arisen.

49. If the prosecutor on any information not ex-officio does not proceed to trial within a year after issue joined, or if the prosecutor causes a nolle prosequi to be entered, or if the defendant be acquitted, (unless the judge at the time of trial certifies that there was reasonable cause for the information,) the court, on motion for the same, may award the defendant his costs to the amount of the recognizance entered into by the prosecutor on filing the information.

## QUO WARRANTO.

51. Every application for an information in the nature of a quo warranto shall be by motion to a Divisional Court for an order nisi, unless the same be ex-officio or be made in respect of a corporate office within the meaning of 45 & 46 Vict. c. 50. s. 225.

52. In respect of such a corporate office as in the last preceding rule mentioned, the application shall be by notice of motion to the person affected thereby to be served not less than ten days before the day specified in the notice for making the application.

53. The notice shall set forth the name and description of the applicant, and a statement of the grounds of the application, and the applicant shall deliver with the notice on service thereof a copy of the affidavits whereby the application will be supported.

54. No order for filing any information in the nature of a quo warranto shall be granted, unless at the time of moving an affidavit be produced by which some person shall depose upon



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oath that such motion is made at his instance as relator ; and such person shall be deemed to be the relator in case such order shall be made absolute and shall be named as such relator in such information in case the same shall be filed, unless the Court shall otherwise order.

55. Every objection intended to be made to the title of a defendant on an information in the nature of a quo warranto shall be specified in the order to show cause or notice of motion, and no objection not so specified shall be raised by the relator on the pleadings without the special leave of the court or a judge.

56. The court may discharge an order nisi for an information in the nature of a quo warranto with or without costs, and in its discretion may, upon such notice as may be just, direct the costs to be paid by the solicitor or other parties joining in the affidavits in support of the application, although he be not the proposed relator.

57. A new relator may by leave of the Court, on notice of motion, be substituted for the one who first enters into the recognizance on special circumstances being shown.

58. Where several orders nisi for informations in the nature of quo warranto have been granted against several persons for usurpation of the same offices, and all upon the same grounds of objection, the court may order such orders to be consolidated, and only one information to be filed in respect of all of them, or may order all proceedings to be stayed upon all but one, until judgment be given in that one, provided always that no order be made to consolidate or stay any proceedings against any defendant unless he give an undertaking to disclaim, if judgment be given for the Crown, upon the information which proceeds.

59. If a defendant on an information in the nature of a quo warranto does not intend to defend, he may to prevent judgment by default enter a disclaimer at the Crown Office Department and file a copy there, and deliver another copy to the relator or his solicitor. Upon the disclaimer being filed judgment of ouster may be entered at the Crown Office Department, and the costs taxed as in judgment by default.

## APPEARANCE TO INFORMATION.

83. A defendant to any \* \* \* information, \* \* \* must enter or cause to be entered in a book at the Crown Office an appearance to such \* \* \* information. \* \* \*

90. When any information is filed and the defendant is under terms to appear immediately and does not enter an appearance, the prosecutor may serve a notice upon the defendant to appear within five days, and in default of appearance may move the court ex parte for leave to enter an

appearance for him, or if the notice was personally served for an attachment.

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94. When any indictment has been found in, or removed into the Queen's Bench Division at the instance of the prosecutor, or of one or more of several defendants, the prosecutor may, instead of applying for a warrant under rules 85, 86, 87, issue a writ of *venire facias* against such defendants as are not parties to the removal of the indictment, or defendants under recognizance to answer, or in the case of an information may issue either a subpoena to answer, or a *venire facias* if it is intended to proceed to outlawry.

95. If the defendant does not appear within four days after the day named in the subpoena to answer, the prosecutor upon filing an affidavit of due service of the subpoena to answer may issue a writ of attachment.

## PLEADINGS.

(B.)—*Pleadings in Quo Warranto.*

134. When any information in the nature of a *quo warranto* has been filed, the defendant may plead to such information within such time, and in like manner as if the information were a statement of claim delivered in an action, and subject to these Rules this pleading and all subsequent proceedings, including pleadings, trial, judgment, and execution, shall proceed and may be had and taken as if in an action, and where the judgment is for the relator judgment of ouster may be entered for him in all cases.

135. The prosecutor in answer to a plea that the defendant has held and executed the office or franchise for six years before the exhibiting the information may reply any forfeiture, surrender, or avoidance by the defendant within the said six years.

(Signed)

HALSBURY, C.  
COLERIDGE, C.J.  
ESHER, M.R.  
JAMES HANNEN, Prest. P.D.A.  
NATHL. LINDLEY, L.J.  
EDW. FRY, L.J.  
C. E. POLLOCK, B.  
H. MANISTY, J.

December 18, 1885.



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